54

1215

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, [illegible] 1904.

No. [illegible] 54.

THE UNITED STATES, APPELLANT,

vs.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JUNE 9, 1904.

(18,808.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 317.

THE UNITED STATES, APPELLANT,

vs.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption to transcript from United States circuit court of appeals	a	a
Transcript from United States circuit court	1	1
Bill of complaint	1	1
Order granting leave to file amendment to bill of complaint	8	8
Amendment to bill of complaint	9	9
Consent to amendment to bill	11	11
Supplemental bill of complaint	11	11
Answer of Chicago, Milwaukee and St. Paul Railway Company et al.	13	13
Schedule A (contract between Southern Minnesota Railway Company and A. Boysen, January 5, 1885	28	28
Assignment Tom Tomson and wife to O. C. Erichsrud, February 3, 1888	31	31
Assignment N. C. Frederiksen and wife to Tom Tomson, April 1, 1885	32	32
Assignment A. Boysen to N. C. Frederiksen, January 6, 1885	33	33
Answer of Michael Donovan	34	34
Answer of Anna Erichsrud et al	39	39
Replication to answer of Anna Erichsrud et al	44	44
Replication to answers of Chicago, Milwaukee and St. Paul Railway Company et al	45	45

	Original.	Print.
Transcript from United States circuit court—Continued.		
Order appointing special special examiner to take testimony	46	46
Oath of special examiner	46	46
Testimony for complainant	47	47
Adams H. Bullis	47	47
Michael Donovan	63	63
Bert. Donovan	83	83
George D. Moore	86	86
Government Exhibit A (affidavit of A. H. Bullis)	88	88
Government Exhibit AA (affidavit of Michael Donovan)	89	89
Michael Donovan, recalled	90	90
Peter L. Welden	99	99
John Carr	103	103
Harry Schilling	109	109
Agreed statement of facts	113	113
Exhibit B (letter Commissioner General Land Office to Secretary of the Interior, February 14, 1889)	118	118
Exhibit C (letter Secretary of the Interior to Commissioner of General Land Office, April 1, 1889)	120	120
Exhibit D (letter Commissioner General Land Office to Secretary of Interior, April 12, 1890)	127	127
Exhibit E (letter Secretary of Interior to Attorney-General, April 16, 1890)	128	128
Testimony for defendants	129	129
Frederick P. Brown	129	129
Peter Hagan	134	134
Frederick P. Brown, recalled	139	139
Anna Erichsrud	140	140
Mabel Anderson	147	147
Wayne Silliman	149	149
Portion of record in case United States v. The Winona and St. Peter Railroad Company et al., 165 U. S., 463	151	151
Louis K. Woodwick	152	152
William E. C. Ross	160	160
Testimony for complainant in rebuttal	161	161
Michael Donovan	161	161
Testimony for defendants in surrebuttal	166	166
Anna Erichsrud	166	166
Defendants' exhibits	169	169
1 (Deed Anna Erichsrud et al. to Louis K. Woodwick, May 24, 1899)	169	169
2 (Deed Southern Minnesota Railway Company to O. C. Erichsrud, March 20, 1888)	171	171
3 (Abstract of title to east half of northwest quarter of section 35, township 101, range 28 in Faribault County, Minn.)	173	173
4 (Lease Anna Erichsrud to Sam Carlyle, April 15, 1899)	176	176
Assignment Anna Erichsrud to Louis K. Woodwick	178	178
5 (Final decree in the matter of the estate of Ole C. Erichsrud)	178	178
6 (Record in case of Michael Donovan v. Thomas S. Thompson)	180	180
Complaint	180	180
Answer	181	181
Reply	184	184
Judgment	185	185

	Original.	Print.
Transcript from United States circuit court—Continued.		
Defendants' exhibits—Continued.		
Extract from 165 U. S., 465–466, in case United States v. Winona and St. Peter Railroad Company et al	186	186
A (Certified copy of abstract from tract book, etc.)	187	187
Abstract from tract book	189	189
List of selections made by Southern Minnesota Railroad Company, September 21, 1870	191	191
List of land certified to the State of Minnesota for benefit of Southern Minnesota Railroad	192	192
Certificate of Commissioner of General Land Office	193	193
Statement as to diagram or sectional map	193	193
Homestead application and affidavit of Michael Donovan	194	194
Certificate of special examiner	195	195
Stipulation as to record upon which cause is to be heard	196	196
Precipe to place cause on June calendar	198	198
Order setting cause for hearing at June term, 1901	198	198
Order, cause continued	198	198
Order setting cause for hearing on February 27, 1902	199	199
Record entry of hearing, February 27, 1902	199	199
Opinion of the court	200	200
Decree, March 10, 1902	206	206
Petition for and order allowing appeal	206	206
Assignment of errors	207	207
Citation and admission of service	209	209
Clerk's certificate to transcript	210	210
Appearance of Mr. Milton D. Purdy for appellant	211	211
Appearance of Mr. John M. Gilman for appellant	211	211
Appearance of Mr. Burton Hanson for appellee, railway company	212	211
Appearance of Mr. Andrew C. Dunn for certain appellees	212	212
Appearance of Mr. W. H. Norris for appellees, railway companies	213	212
Argument commenced	214	213
Order of submission	214	213
Opinion United States circuit court of appeals	215	214
Decree United States circuit court of appeals	220	218
Petition for appeal	220	218
Assignment of errors	222	219
Order allowing appeal	224	220
Citation and admissions of service	226	221
Clerk's certificate to transcript	229	222

a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1902, of said court, begun and held at the United States court house in the city of St. Paul, Minnesota, on the first Monday in May, to wit, the fifth day of May, A. D. 1902, before the Honorable Walter H. Sanborn and the Honorable Amos M. Thayer, circuit judges, and the Honorable John E. Carland, district judge.

Attest:

[SEAL.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit: On the twenty-fourth day of March, A. D. 1902, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Minnesota, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein the United States of America was appellant, and the Chicago, Milwaukee and St. Paul Railway Company et al. were appellees, which said transcript of record is in the words and figures following, to wit:

The United States of America, Complainant.

vs.

Chicago, Milwaukee & St. Paul, Railway Company, The Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thomson and O. C. Erichsrud, Defendants.

Pleas before the Honorable the Judges of the Circuit Court of the United States of America, for the Third Division of the District of Minnesota, of the January A. D. 1902 Term of said Court, held in the City of St. Paul, in said District, in the year 1902, A. D.

District of Minnesota—ss.

Be it remembered that on the 6th day of March A. D. 1893 came the above named complainant and filed its bill of complaint in the Clerk's office of said Court, in words and figures following, to wit:

1 In the Circuit Court of the United States in and for the District of Minnesota, Second Division.

The United States of America, Complainant.

vs.

The Chicago, Milwaukee & St. Paul, Railway Company, The Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thompson and O. C. Erichsrud, Defendants.

To the Honorable Judges of the Circuit Court for the District of Minnesota:

The United States of America, by W. H. H. Miller, its Attorney General, brings this its bill of complaint against The Chicago, Milwaukee & St. Paul Railway Company, a corporation created under and pursuant to the laws of the State of Wisconsin and owning and operating lines of railway in the State of Minnesota, The Southern Minnesota Railway Company, a corporation organized and existing under and pursuant to the laws of the State of Minnesota, and Michael Donovan, Thomas S. Thompson and O. C. Erichsrud, residents of the State of Minnesota, and complaining says:

1st. That by an act of Congress approved July 4, 1866, there was granted by the United States to the State of Minnesota certain public lands to aid in the construction of a railroad

from Houston in the County of Houston in said state, through the counties of Fillmore, Mower, Freeborn and Faribault to the Western boundary of said state.

2 2nd. That by said act of Congress, reference to which in full is hereby made, there was excepted from said grant any section or part of section within the limits of said grant, to which, at the time of the definite location of said railroad, it should appear that the right of pre-emption or homestead settlement had attached.

3rd. It was further provided by said act that when the Governor of the State of Minnesota certified to the Secretary of the Interior that certain specified portions of said road has been completed in a specified manner, then the Secretary of the Interior should certify the lands in alternate sections or parts of sections designated by odd numbers, situated as therein pointed out, to the State of Minnesota for the benefit of said railroad.

4th. That thereafter the State of Minnesota, by an act of the Legislature approved February 25, 1867, accepted said grant and granted to and vested in the Southern Minnesota Railroad Company a corporation then organized and existing under the laws of said state, all its rights in said granted land, subject to all of the conditions imposed by the said granting act of Congress, and by said act of said Legislature, and thereby the said Southern Minnesota Railroad Company became the beneficiary under said grant, subject, however, to all of its conditions and the conditions of the said act of February 25th, 1867.

5th. That the said Southern Minnesota Railroad Company thereupon proceeded with the work of the construction of said railroad and filed in the proper office a map of the definite location of its contemplated road opposite to the land hereinafter described, on the ..... day of ..... 18.... and not before.

3 That the entire line or route of said road was not definitely fixed until the ..... day of ..... 18....

6th. That prior to the definite location of said railroad opposite thereto, and prior to the withdrawal of the lands included within the boundary limits of said grant from disposition under the public land laws of your orator, a certain tract of land within the twenty (20) mile indemnity limits of said grants, as described in said act of Congress, to wit, the east half of the northwest quarter (E. ½ N. W. ¼) of section thirty-five (35), township one hundred one (101) north, range twenty-eight (28) west, Fifth P. M. Minnesota, was excepted from said grant and

the withdrawal from sale on account thereof by the homestead entry of one Lyman Barkley, who had theretofore entered the same as a homestead, which homestead entry was cancelled January 14, 1868; that by reason of the existence of said homestead entry, the tract of land hereinbefore described was excepted from the withdrawal for the benefit of said grant and after the cancellation of said entry, such tract became subject to entry under the homestead and pre-emption laws by the first legal applicant therefor.

7th. That on June 6, 1868, one Michael Donovan, being then and there qualified to make a homestead entry under and pursuant to the laws of the United States, regularly and in all things pursuant to the homestead laws of the United States, made application to the proper local land office in the State of Minnesota, to enter as a homestead the land hereinbefore described, which application was rejected by the local land officers for the reason, as stated by them, that the land covered thereby was railroad land and not subject to entry.

4 8th. That in addition to the tract hereinbefore described his application covered also the east half of the southwest quarter (E. ½ S. W. ¼) of Section twenty-six (26) in said township and range, which was embraced in the homestead entry of said Barkley, cancelled as heretofore alleged.

9th. That he was allowed by the local land office to enter said east half of the southwest quarter of section twenty-six and a final certificate thereto was issued to him May 18, 1875, and said land was patented to him July 1, 1875.

10th. That on the 29th day of November, 1870, and not before, the said Southern Minnesota Railroad Company selected said tract, to wit, the east half of the northwest quarter of Section thirty-five, within its indemnity limits on account of the aforesaid grant in lieu of lands situated within its place limits, and in pursuance of said selection, said tract of land was certified to the State of Minnesota for the benefit of the said railroad company, March 25, 1871.

11th. That such certification by the land department of your Orator was erroneous and void for the reason that, prior to the selection of said land by the said railroad company, there had attached thereto the homestead right of said Michael Donovan, the rejection by the local land officers of the application of said Donovan to enter said land as a homestead being improper, and said Donovan having in all things complied with the laws of the United States relating to homestead entries was entitled at the time of his said application to enter said lands as a portion of his homestead.

12th. That prior to his application to enter said land as a homestead, the said Michael Donovan entered into possession thereof for the purpose of settling upon and entering the same as a homestead under the laws of the United States, and that after his application to enter the same, made on the 6th day of July, 1867, was denied, as hereinbefore alleged he cultivated portions of said tract of land and continued each year to cultivate portions thereof until after the selection thereof by the railroad company as hereinbefore alleged, and during said time enclosed a portion thereof by fence.

13th. That on the 28th day of June, 1883, the said Michael Donovan again attempted at the proper land office to enter said land as an additional homestead, and then and there in due form applied so to enter said land, which application was refused by the officers in charge of said office, from which refusal the said Donovan duly appealed to the Commissioner of the General Land Office which appeal is still pending and undetermined.

14th. That on the 8th day of August, 1871, the State of Minnesota conveyed by deed to the Southern Minnesota Railroad Company said land, and on the 3rd day of March, 1877, the Southern Minnesota Railroad Company, having changed its name to the Southern Minnesota Railway Company, conveyed said land to the Southern Minnesota Railway Company.

15th. That thereafter on the 5th day of January, 1885, the said Southern Minnesota Railway Company, by contract in writing, agreed to sell the said tract of land to one A. Boyson for the [—] in instalments at various times, and upon such payments being made, agreed to convey said land to such purchaser, which said contract was not recorded; that on the 6th day of January, 1895, the said A. Boyson, with the consent of said railway company assigned said contract and all his right, title and interest in and to said land thereunder, to one N. C. Frederickson, and on the 1st day of April, 1885, the said N. C. Frederickson assigned said contract and all his right, title and interest in and to the said tract thereunder to said defendant Thomas S. Thompson, who now holds the same; that thereafter said Thomas S. Thompson assigned his interest in said contract to one O. C. Erichsrud for the purpose of securing to said Erichsrud the payment of an indebtedness due him from said Thompson; that thereafter, to wit, on the 20th day of March, 1888, by agreement between him and the said Thompson, and for the purpose of further securing said indebtedness the said Erichsrud procured from the said Southern Minnesota Railway Company a conveyance to himself of said land by deed that day executed, which was afterwards, on the

8th day of June, 1888, filed for record in the office of the Register of Deeds of Faribault County, Minnesota, and on said day recorded in Book 16 of Deeds, page 395; that your Orator is informed and believes and so charges the fact to be that said Erichsrud took said assignment and conveyance with full knowledge of the fact that the right and title of said Southern Minnesota Railway Company and all persons claiming by, through, or under it, in and to said real estate, was in dispute and that the certification of said real estate to the State of Minnesota for the benefit of said Railway Company was improper and without authority of law; and further that said Erichsrud took a conveyance of said real estate as se-
7 curity for a pre-existing debt and holds the legal title thereto for the benefit of said Thompson and as a mortgage only.

16th. That the Chicago, Milwaukee & St. Paul Railway Company became and is now the owner of the grant made by the act of Congress of July 5, 1866, instead of the aforesaid Southern Minnesota Railroad Company and the aforesaid Southern Minnesota Railway Company, and became and is the successor in interest of said companies and each of them, in and to said grant, entitled to all the benefits and charged with all of the conditions which before it became such successor were enjoyed by and charged upon its said predecessors and each of them, and now stands in place of the Southern Minnesota Railway Company and the said Southern Minnesota Railroad Company with regard to said grant and the lands granted and the certification made as aforesaid of the tract hereinbefore described to wit, the east half of the northwest quarter of section thirty-five, township one hundred and one North, Range twenty-eight West.

17th. That the foregoing facts appearing, the Secretary of the Interior of the United States, under and pursuant to an act of Congress approved March 3, 1887 entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," reference to which said act in full is hereby made, cited the said Chicago, Milwaukee & St. Paul Railway Company as the successor in interest of the said Southern Minnesota Railroad Company and the said Southern Minnesota Railway Company, to show cause
8 why proceedings should not be commenced against it for the recovery of said tract of land, under and pursuant to the provisions of said last mentioned act, on the ground that said tract was improperly, erroneously and without authority of law certified to the beneficiary under said grant; it having been, at and prior to the definite location of

said road and at and prior to the selection as aforesaid by the said Southern Minnesota Railroad Company, excepted from the operation of said grant by the application for homestead entry heretofore set out.

18th. That in response to said citation or order to show cause, the said Chicago, Milwaukee & St. Paul Railway Company, by its attorney, appeared before the proper officers of the Interior Department and claimed that upon the facts hereinbefore set out, said land was not excepted from the operation of said grant and was properly certified to the said State of Minnesota, as hereinbefore alleged, and as a further claim and in bar of any proceeding under the said last mentioned act of Congress, alleged and showed that in an action in the District Court of the County of Faribault in the State of Minnesota, wherein Michael Donovan was plaintiff and said Thomas S. Thompson defendant, it was held and decided by the said District Court,—the title to said land and the right to possession thereof being then in question as between said parties,—that said Michael Donovan was not the owner and entitled to the possession of said land, and that said Thomas S. Thompson was the equitable owner thereof and entitled to possession of the same.

9 19th. That the said Secretary of the Interior held and decided upon said hearing that the land in controversy was excepted from the said grant and the operation thereof, in view of the facts hereinbefore stated, and that the same had been improperly and erroneously certified to the said state of Minnesota for the purposes hereinbefore set out, and that the judgment of the said District Court of the State of Minnesota was not a bar as against the Government to prevent it from proceeding to recover said land under and pursuant to said act, and thereupon caused a proper demand in writing to be made upon said company for the re-conveyance to the United States of said tract of land within ninety days thereafter, which said demand was made on April 9, 1889, but that said company refused to comply therewith and has ever since refused and still refuses so to do.

20th. And your orator alleges that the act of Congress of March 3, 1887, herein referred to, reference in full to which is hereby made, fully provides for the adjustment of conflicting claims to the lands therein described as being found to be excepted from the operation of unadjusted land grants arising between claimants thereto under the homestead or pre-emption laws of the United States, actual settlers thereon, and per-

sons purchasing or contracting to purchase the same from the railroad company claiming to be entitled thereto.

21st. That at the time of the commencement and trial of the action in the District Court of Fairbault County hereinbefore referred to, and the rendition of judgment therein, the said act of Congress has not been passed and no action had
10 been taken by your orator to recover said tract of land from the said railroad company.

22nd. That the land grant hereinbefore referred to for the benefit of the said Southern Minnesota Railway Company is unadjusted, and that this action is brought by and under the authority of and pursuant to the said act of Congress, approved March 3, 1887.

23rd. That the said Michael Donovan, Thomas S. Thompson and O. C. Erichsrud each claim an interest in said real estate, and your orator prays that they may be required to answer herein as to such interest, if any they have.

And may it please your Honors to grant unto your Orator a writ of subpoena issuing to and under the seal of this Court, directed to the defendants, the Chicago, Milwaukee & St. Paul Railway Company, The Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thompson and O. C. Erichsrud, and each of them, commanding them at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honors in this Honorable Court and then and there to answer (but not under oath, answer under oath being hereby expressly waived) all and singular the premises and to stand to perform and abide such order and decree therein as to your Honors shall seem meet and your Orator will ever pray.

Wherefore, your Orator prays for a decree herein against the defendants and each of them, that the land hereinbefore described be restored to your Orator; that the certification thereof to the State of Minnesota and the conveyance thereof by the said state to the said Southern Minnesota Railroad Com-
11 pany, the conveyance thereof by the said Southern Minnesota Railroad Company to the said Southern Minnesota Railway Company, the conveyance thereof by the said Southern Minnesota Railway Company to the said O. C. Erichsrud, and the contract of sale by the said Southern Minnesota Railway Company, hereinbefore referred to, and each of said con-

veyances and contracts, be set aside and canceled, and for such other and further relief as to your Honors may seem meet and just.

W. H. H. MILLER,
Attorney General.
By Robert G. Evans,
Spl. Asst. U. S. Attorney.
EUGENE G. HAY,
Solicitors for Complainant.

ROBERT G. EVANS,
Special Assistant U. S. Attorney,
of Counsel.

Indorsed: Filed March 6th, 1893. Oscar B. Hillis, Clerk. By Stephen Thorne, Deputy.

Thereafter and on the 20th day of June 1894 the following amendment to bill and order was filed of record in said cause, to-wit:

In the Circuit Court of the United States In and for the District of Minnesota, Second Division.

United States of America, Complainants,
v.
The Chicago, Milwaukee & St. Paul Railway Company, The Southern Minnesota Railway Company, Michael Donovan, Thomas S .Thompson and O. G. Erichsrud, Defendants.

Order.

Now, on motion of Robt G. Evans, Special Assistant United States Attorney, Counsel for Complainants in the above entitled cause, and upon the consent in writing of the defendants, The Chicago, Milwaukee & St. Paul Railway Company, & The Southern Minnesota Railway Company, ——— and it appearing to the court that the other defendants herein have not answered or demurred to the bill of complaint, and that as to them no issue has been joined,

It is ordered that the bill of complaint herein be, and the same hereby is, amended as set out in the proposed amendments attached hereto, and that the demurrer heretofore interposed to the original bill of complaint by the defendants, The Chicago, Milwaukee & St. Paul Railway Company and the Southern Minnesota Railway Company shall be and stand as a demurrer to the said bill of complaint as amended.

Dated June, 1894.

R. R. NELSON, Judge.

13 In the Circuit Court of the United States In and for the District of Minnesota, Second Division.

United States of America, Complainants,

v.

The Chicago, Milwaukee & St. Paul Railway Company, The Southern Minesota Railway Company, Michael Donovan, Thomas S. Thompson and O. C. Erichsrud, Defendants.

The complainants in the above entitled action hereby amend their bill of complaint filed in said action, as follows, to-wit:

By inserting therein, in place of the first subdivision of said bill of complaint, the following:

"That by an act of congress approved July 4, 1866, there was granted by the United States to the State of Minnesota, to aid in the construction of a railroad from Houston in the County of Houston in said state, through the Counties of Fillmore, Mower, Freeborn and Faribault, to the western boundary of the state, every alternate section of land, designated by odd numbers, to the amount of five (5) alternate sections per mile on each side of said road."

By inserting therein, in place of subdivision second, the following:

"That by said act of congress, reference to which in full as found in Volume 14, Statutes at Large, page 87, is hereby made it was further provided as follows: But in case it shall appear that the United States have, when the lines or route of said road are definitely located, sold any section or part thereof granted as aforesaid, or that the right of pre-emption or

14 homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected, for the purposes aforesaid, from the public lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections designated by odd numbers as shall be equal to such lands as the United States have so reserved or otherwise appropriated, or to which the right of homestead or pre-emption settlement has attached as aforesaid, which lands, thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior, shall be held by the said State of Minnesota for the purposes and uses aforesaid; provided that the land so selected shall in no case be located more than twenty (20) miles from the lines of said road. And it was further provided by said act as follows: "That as soon as the Governor of

said state shall file, or cause to be filed with the Secretary of the Interior, maps designating the routes of said road, then it shall be the duty of the Secretary of the Interior to withdraw from market lands embraced within the provisions of this act."

By filling the dates left blank in subdivision fifth of said bill of complaint, so that the same will show that the line of the route of the defendant's road was definitely located opposite to the land in controversy on the 10th day of December, 1866, and that the entire line or route of said road was not definitely fixed or located until the 4th of May, 1871. And by adding to said fifth subdivision the following:

"That an order was made by the Secretary of the Interior withdrawing the lands embraced within the provisions of said act, from market on September 10, 1866.

15 By inserting therein, in place of subdivision sixth of said bill of complaint, the following:

"That on the 21st day of June, 1866, one Lyman Barkley, being then and there qualified so to do, duly and regularly and in all things pursuant to the homestead laws of the United States, entered the east half of the northwest quarter (E. 1-2 NW 1-4) of Section thirty-five (35), Township one hundred one (101) north of Range twenty-eight (28) west, Fifth P. M., Minesota, as a homestead which tract afterwards fell within the twenty (20) mile indemnity limits of said grant as described in said act of congress; that the homestead entry of said Barkley was at said date accepted and approved by the proper officers of the land department of your orator and from said day became and continued to be and was, until the time hereinafter mentioned, and approved, recognized and existing homestead entry of record in the proper local and general land offices of the United States, attached to the tract aforesaid. That said entry was canceled January 14, 1868, and not before, and that by reason of the existence of said homestead entry as aforesaid the tract of land hereinbefore described was excepted from said grant and the withdrawal made on account thereof, and that from and after the cancellation of said entry, such tract became again subject to entry under the homestead and pre-emption laws of the United States by the first legal applicant therefor.

By inserting at the end of subdivision eighteenth, after the word "same", the following:

"Which said finding and decision was made March 24, 1887, and judgment in pursuance thereof was entered January 4, 1888."

ROBERT J. EVANS,
Special Assistant United States Attorney,
Of Counsel for Complainant.

16 We hereby consent that the foregoing proposed amendments may be made and incorporated in and made a part of the original Bill and that an order of court may be entered allowing the same, upon the understanding that the demurrer heretofore interposed in behalf of the Chicago, Milwaukee & St. Paul Railway Company and the Southern Minnesota Railway Company to the original bill of complaint shall stand as a demurrer to the amended bill of complaint.

Dated January 13, 1894.

JOHN R. CARY,
For Railway Company, and
Thompson and Erichsrud.

Indorsed: Amendment to Bill. Filed June 20th, 1894. Oscar B. Hillis, Clerk. By Stephen Thorne, Deputy.

Thereafter and on March 4, 1901, the following Supplemental Bill was filed of record in said cause, to-wit:

17 Circuit Court of the United States, for the District of Minnesota, Third Division.

The United States of America
vs.
Chicago, Milwaukee & St. Paul Railway Company, The Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thomson and O. C. Erichsrud.

Supplemental Bill.

To the Honorable Judges of Said Court:

Your orator by leave files this, its supplemental bill in the above entitled action and alleges:

(1) That said action was commenced in 1893 to recover back the title to the east ½ of the Northwest ¼ of Section 35, Town 101, N., Range 28 in Faribault County, Minnesota, as having been erroneously certified to the State of Minnesota, and conveyed by said State to the Southern Minnesota Railroad Company, and by the said Southern Minnesota Railway Company to the defendant, O. C. Erichsrud, as appertaining to the grant made by Congress July 4, 1866, to said State to aid in the construction of the Southern Minnesota
18 Railroad, and your orator hereby refers to the facts stated in the original bill for a more particular account of the facts in said action. That due service was made upon the said defendants Railway Companies, and upon the defendant Donovan, but that the defendants Erichsrud and Thomson were not found and no service was made upon them nor have they appeared in said action. That the said defendants, Rail-

way Companies jointly answered in said action to which a replication was duly filed. That no testimony has been taken in said action. That said action by stipulation or understanding of counsel was not removed but was allowed to stand over without prejudice, awaiting the decision of certain cases pending in the U. S. Supreme Court, which it was thought might have a bearing upon the facts in this action.

(2) And your orator states that since the commencement of said action, the said O. C. Erichsrud has departed this life intestate, leaving surviving him Anna Erichsrud, his widow, and Addie J. Erichsrud, Mabelle H. Erichsrud and Julia P. Erichsrud, his children, and only heirs at law, and that on the 24th day of May, 1899, they joined in a deed conveying said tract of land to Louis K. Woodwick who now holds the legal title to the same. But your orator alleges on information and belief that the said Woodwick was not a bona fide purchaser of said tract of land, but took a conveyance of the same at the request and for the accommodation and in trust for the said widow[s] and heirs of the said O. C. Erichsrud, and also with full notice and knowledge of the pendency of this action and of the equitable claim and rights to the same of the said Michael Donovan, as set forth in the original
19 bill in this action. That said tract of land is of the value of over $2,000.

(3) Wherefore, May it please your Honors to grant unto your orator, a writ of subpoena, issuing to and under the seal of this Court, directed to the said Louis K. Woodwick, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Erichsrud and Julia P. Erichsrud, and each of them, commanding them at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honors in this honorable Court in said action and then and there to answer, but not under oath, the answer under oath being hereby waived, all and singular the premises, and to stand to, perform and abide by such order and decree in said action as to your Honors shall seem meet and your orator will ever pray.

(4) Wherefore, Your orator prays for a decree in said action as prayed for in the original bill, also that the said conveyance to the said Louis K. Woodwick be declared and decreed to be canceled, set aside and held for naught, and for other proper relief.

ROBT G. EVANS,
U. S. District Attorney.

Filed March 4th, 1901. Henry D. Lang, Clerk.

And on the 11th day of August, 1894, the following Answer of the Ry Cos was filed of record in said cause, to wit:

20 Circuit Court of the United States, District of Minnesota, Second Division.

The United States of America
vs.
Chicago, Milwaukee & St. Paul Railway Company, the Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thomson, and O. C. Erichsrud.

The joint and several answers of the Chicago, Milwaukee & St. Paul Railway Company, and the Southern Minnesota Railway Company, two of the defendants, to the bill of complaint of the United States of America, Complainant.

These defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the Complainant's said Bill of Complaint contained, for answer thereunto, or unto so much, or such parts thereof as these defendants are advised is material for them to make answer unto, answering:

1st. Admit and say that by an Act of Congress, approved July 4th, 1866, there was granted by the United States to the State of Minnesota, certain public lands to aid in the construction of a railroad from Houston, in the County of Houston, in said State, through the Counties of Fillmore, Mower,
21 Freeborn and Fairbault, to the western boundary of said State. That by said Act of Congress, reference to which in full is hereby made, there was granted to the State of Minnesota for the purpose of aiding the construction of the railroad from Houston, in the County of Houston, through the Counties of Fillmore, Mower, Freeborn and Fairbault, to the western boundary of the State, every alternate section of land designated by odd numbers to the amount of five alternate sections per mile on each side of said road; but in case it should appear that the United States had, when the lines or route of said road were definitely located, sold any section or part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement had attached to the same, or that the same had been reserved by the United States for any purpose whatever, then it should be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid, from the public lands of the United States nearest to tiers of sections above specified, so much land in alternate sections or parts of sections, designated by odd numbers, as should be equal to such lands as the United States had sold, reserved or otherwise appropriated, or to which the right of homestead settlement or pre-emption had attached as aforesaid, which lands thus indicated by odd numbers and sections,

by the direction of the Secretary of the Interior, shall be held by said State of Minnesota for the purposes and uses as aforesaid.

22 2nd. That by an Act of the Legislature of the State of Minnesota, approved on the 25th day of February, 1867, the lands so granted by Congress to the State of Minnesota were accepted upon the terms, conditions and restrictions therein prescribed, and the State of Minnesota, assumed and undertook the trust created by such grant and pertaining to said line of road. That all the lands, interests, rights, privileges and powers granted to and conferred upon the State of Minnesota, for the purpose of aiding in the construction of a railroad from Houston, in Houston County, through the Counties of Fillmore, Mower, Freeborn and Fairbault, to the western boundary of the State, were thereby granted to and vested in the Southern Minnesota Railroad Company.

3rd. That the said Southern Minnesota Railroad Company was a corporation of the State of Minnesota, organized under and by virtue of its laws and on the 29th day of March, 1864, and at the time of the making of said grant was engaged in the construction of the road from La Crescent by the way of Houston, to the western boundary of the State. That prior to the acceptance of said grant by the State of Minnesota on the 25th day of February, 1867, it had built and constructed its railroad from La Crescent to Houston, in said State, and had located the same opposite to the lands in question, and westerly therefrom to the State Line, and had filed its map of location with the Secretary of the Interior. That
23 afterwards the location of said road from a point at or about Range 40, west of the 5th P. M., to the State Line was disapproved by the Secretary of the Interior, and that subsequently the line from that point was relocated to the State Line and accepted as relocated.

4th. It was provided in and by said Act that when the Governor of the State of Minnesota certified to the Secretary of the Interior that any section of ten consecutive miles of said road had been completed he should issue to the State any of the lands in alternate sections or parts of sections, designated by odd numbers situated within 20 miles of the road as completed, and lying co-terminus to said completed section of 10 miles, for the benefit of the road having completed the ten consecutive miles as aforesaid, but provided that the co-terminus rule thereby applied should not extend to such lands as are taken by said railroad company to make up deficiencies, provided that no land to make up such deficiencies shall be taken at any point within ten miles upon each side of the line of said road.

5th. That the Southern Minnesota Railway Company thereafter proceeded with the work of the construction of said railroad, and completed the same to Winnebago City in the State of Minnesota within the time of the grant, and according to its terms and conditions in the year 1870. That as these defendants are informed and believed the line of said road was definitely located opposite the land in question, and a map thereof filed with the Secretary of the Interior December 10th, 1866. That the original location of said line west of Range 40, was not accepted by the Secretary of the Interior, as above set forth, but said line from that point westward was re-
24 located, and a map thereof filed and accepted by the Secretary of the Interior in May, 1867, as appears from the records in the office of the Secretary of the Interior, but they have no knowledge thereof except such as is derived from the record of the filing of said map.

6th. And these defendants further answering say that they have no knowledge as to whether one Lyman Barclay ever made a homestead entry on the east half of the northwest quarter of section 35, township 101 north, range 28 west, 5th P. M., Minnesota, and that neither of these defendants ever knew or had any knowledge or information that such an entry had been made until a suit was instituted in the District Court of Minnesota by Michael Donovan vs. Thomas Thomson, a purchaser of said land, and was then in possession of the premises as such purchaser, and on information and belief they say that said piece of land was not excepted from said grant, and if any such entry was ever made, that it had been abandoned long before the making of said grant, and that the said pretended entry was cancelled January 14th, 1868, and said land restored to the public lands as a part thereof, and these defendants, on information and belief, deny that by reason of the existence of said homestead entry, if any such entry every existed such tract of land was excepted from the benefit of said grant, and further say that after said cancellation thereof, said tract became subject to entry or selection under said grant, the same as other public lands, and allege and claim that upon the cancellation of said Barclay's entry, the tract became subject to selection on account of the grant, or to entry, under the pre-emption or homestead laws,
25 by the first legal applicant. That there was no encumbrance or charge upon said land at the time it was selected as indemnity under said grant, and that it was legally and lawfully selected by said Southern Minnesota Railroad Company as a part of the indemnity to which it was entitled under said grant, and said defendants, on information and belief, expressly deny that the said entry of the said Barclay,

after it was cancelled, operated to segregate or set apart this piece of land from the other public lands within said grant, so as to prevent its selection as a part of said indemnity. And further say that after the cancellation of said entry, January 14th, 1868, the said 80 acres became a part of the public lands of the United States, subject to entry or selection by any party entitled to enter or select public lands, and that it was competent for the said Southern Minnesota Railroad Company, as the beneficiary of said grant, to select said 80 acres as lieu land under said grant, and it was not prohibited from selecting said 80 acres after the cancellation of said homestead entry, on account of its having been previously covered by the homestead claim, and this defendant denies all the matters and things stated in the sixth paragraph of said bill, except as herein stated and admitted.

7th. On information and belief the said defendants further answering deny that on June 6th, 1868, one Michael Donovan, being then and there qualified to make a homestead entry under and pursuant to the laws of the United States, and in all things pursuant to the homestead laws, made application to the proper local land office in the State of Minnesota,
26 to enter as a homestead the land hereinafter described. That there is no record of any such entry or application for such entry, but that it does appear on the records of the General Land Office that the said Michael Donovan, at or about that time, made application to enter a certain other 80 acres, and did enter the same as a homestead, and that if he ever had any intention of entering the land in question he abandoned such intention, and never made or filed any application therefor, while it remained a part of the public land, and that at the time it was selected by the railroad company it was a part of the public lands within the indemnity limits and subject to entry or selection as such.

8th. These defendants further answering admit and say that on the 29th day of November, 1870, the said Southern Minnesota Railroad Company selected the said east half of the Northwest quarter of Section 35, being within its indemnity limits on account of the aforesaid grant in lieu of land situated within its place limits and in pursuance of said selection said tract of land was certified by the Secretary of the Interior to the State of Minnesota for the benefit of said railroad company March 25th, 1871, and further say that at the time of said selection, there was no homestead or other claim on said land, but that it was a part of the public lands within the indemnity limits to said grant, and that said Southern Minnesota Railroad Company was entitled to enter the same as a part of its indemnity, in lieu of lands disposed of in its place limits, and

said defendants deny that such certification by the land
27 department of the complainant was erroneous and void for the reason that prior to the selection of said land by the said railway company there had attached thereto the homestead right of said Michael Donovan or for any other reason, and deny that rejection by the local land officers, if made, of the application of said Donovan to enter said land as a homestead was improper, and deny that said Michael Donovan was ever entitled to enter said land as a homestead, or that any homestead right remained attached to said 80 acres of land at the time or after the selection by said Southern Minnesota Railroad Company, and on information and belief deny that the said Michael Donovan prior to his pretended application to enter said 80 acres as a homestead, entered into possession thereof for the purpose of settling upon, and entering the same as a homestead, under the laws of the United States. Deny that he ever made application to enter the same on the 6th day of July, 1867, or at any other time or that he was in possession, or remained in possession thereof until after the rendition of the judgment in the District Court of the State of Minnesota, mentioned in said bill, or that he cultivated portions of said 80 acres until after the selection thereof by the railroad company, or enclosed a portion thereof by fence, and that any and all acts of the said Michael Donovan in reference to said 80 acres, if any were made or performed were trespasses without authority of law.

9th. That these defendants have no knowledge, information, or belief as to whether said Michael Donovan on the 28th day of June, 1883, attempted, at the proper land office, to enter said land as an additional homestead, or that he then and there
28 applied so to enter such land, or whether said application was refused by the officers in charge of said offices, or whether said Donovan duly appealed to the Commissioner of the General Land Office, or whether such appeal is still pending and undetermined, but say that inasmuch as said 80 acres were certified to the State of Minnesota, March 25th, 1871, any attempt at any time thereafter to enter the same at any land office was unauthorized and created no right whatever in behalf of said Michael Donovan, and that such application and appeal from the decision of the land officer refusing to allow it to be made was unauthorized and without any legal force or effect whatever.

10th. Defendants admit and claim that on the 8th day of August, 1871, the State of Minnesota conveyed by deed to the Southern Minnesota Railroad Company said land, and that

thereby the Southern Minnesota Railroad Company became the owner thereof in fee simple.

And further answering deny that the Southern Minnesota Railroad Company ever changed its name to the Southern Minnesota Railway Company, or that it ever conveyed said land to the Southern Minnesota Railway Company in any other manner than is hereinafter specified and stated.

11th. And these defendants, further say that no grant of land was ever made by the Congress of the United States to the State of Minnesota for these defendants, and further deny that the State of Minnesota, or Congress of the United States, ever conveyed or granted to the said defendants, or either of them any lands whatever so as aforesaid granted to the State of Minnesota by the Act of Congress approved on the 4th day of July, 1866.

29 They expressly deny that they ever had or owned any such land grant, or that they or either of them, ever received any of said lands granted by said Act of Congress to the State of Minnesota, from Congress or from the said state of Minnesota, and they further expressly deny that the said Southern Minnesota Railroad Company ever granted to these defendants, or either of them, the said grant of land, or the right to manage or control the same, or to receive the benefits thereof, or that they ever received said grant of land in any manner, or that they ever assumed or became charged with the duties, obligations, or liabilities, if any, resting on the said Southern Minnesota Railroad Company, in reference to said lands and further deny that they or either of them are the successor or successors of the Southern Minnesota Railroad Company, or liable for its debts or obligations in any manner whatever.

12th. And these defendants further answering on information and belief say that on September 24th, 1867, the said Southern Minnesota Railroad Company made and executed a mortgage of its entire road and property to Samuel B. Ruggles and Albon P. Man, as trustees, to secure 3600 bonds of One Thousand Dollars each, bearing eight per cent interest, and on the same day, but subsequent to said first mortgage, executed another mortgage to Samuel B. Ruggles and Albon P. Man, to secure 3600 bonds of One Thousand Dollars each, bearing seven per cent interest, known as the equipment bonds, and that each of said mortgages purported to convey to said trustees the entire railroad, its property and equipment
30 of every name and nature, together with all the lands received by said Company in virtue of said land grant

so as aforesaid made by Congress to the State of Minnesota, and by said State conferred upon said Company. That after making said mortgage said Southern Minnesota Railroad Company issued $3,332,000 bonds under said construction mortgage and $1,252,000 of bonds, under the equipment mortgage, and that the proceeds thereof were used in constructing and equipping said railroad from LaCrescent by way of Houston to Winnebago City, a distance of about 167½ miles, in all respects as required by said Act of Congress, and that afterwards and in pursuance of said Act and the Act of the State of Minnesota, said Southern Minnesota Railroad Company received from the State of Minnesota deeds of the lands, so as aforesaid granted by Congress to the State of Minnesota to aid in the construction of said road, and by the said State conferred upon said railroad, and that thereby the said Southern Minnesota Railroad Company became the owner in fee of all the lands, so as aforesaid granted to the State of Minnesota by the said Act of Congress, and conferred by deed by said State upon the said Southern Minnesota Railroad Company. That by the terms of said mortgages the said Southern Minnesota Railroad Company was authorized to sell said lands to actual purchasers, and apply the proceeds to the construction of said road, and that the great majority of said lands were so sold
31 by the said Southern Minnesota Railroad Company, to actual settlers, and the proceeds thereof were so used in constructing said road. That said Southern Minnesota Railroad Company afterwards and on the first day of April, 1872, made default in the payment of the interest on said construction bonds, and subsequently and on July 1st, 1872, defaulted in the payment of interest on said equipment bonds.

13th. That afterwards in the month of October, 1872, the said Samuel B. Ruggles and Albon P. Man, trustees, commenced separate suits to foreclose said mortgages in the Circuit Court of the United States for the District of Minnesota, that process was issued and served upon the said Southern Minnesota Railroad Company and other lienors upon said property, and that such proceedings were had in said foreclosure suits, that final decrees for the sale and foreclosure of said property were entered in each suit May 27th, 1874. That afterwards on the 10th day of February, 1877, said mortgaged property was sold upon the decree rendered upon the equipment mortgage, subject to the lien of the prior mortgage known as the construction mortgage, by a United States Master in Chancery of the District of Minnesota, and was purchased by A. P. Man and H. H. Cammann, and for the benefit of the bondholders under said equipment mortgage, and that

said sale was duly confirmed by said Circuit Court of the United States, and a deed executed by the Master in Chancery to said purchasers. Thereby the entire property of the said Southern Minnesota Railroad Company, together with all the lands which had been deeded to them by the State of Minnesota, and still remain in said company, were conveyed to said purchasers, and they became the owners thereof in fee, including the premises in question to wit: The east half
32 of the northwest quarter of section thirty-five, township one hundred and one north, range twenty-eight west, fifth principal meridian.

14th. That afterwards and on the 3rd day of March, 1877, the said A. P. Man and H. H. Cammann, under the provisions of chapter 30, of the laws of 1876 of the State of Minnesota, organized as such purchasers the Southern Minnesota Railway Company, and transferred to the Company so organized all the property, lands and other effects, so as aforesaid purchased by them at said foreclosure sale of said mortgage, subject, however, to the [lieu] of the first, or construction mortgage above described. That said Southern Minnesota Railway Company so organized by the purchasers under said foreclosure sale immediately took possession of said railroad, its property and franchised lands and tenements of every description, and from that time continued to own, manage and control the same.

That subsequently the said Southern Minnesota Railway Company purchased and acquired the railroad from Wells to Mankato, also the railroad from Winnebago City to Sioux Falls, and afterwards and on the first day of January, 1880, sold and transferred the whole of said railroad, together with all the stock of the Southern Minnesota Railway Company to the Chicago, Milwaukee & St. Paul Railway Company, and that the defendant, the Chicago, Milwaukee & St. Paul Railway Company immediately thereafter took possession of said property, and ever since has owned and [and] controlled
33 the same for its own use and benefit. That the lands in question, and other lands owned by the Southern Minnesota Railway Company, in virtue of its purchase at said foreclosure sale, were allowed to remain in the name of said Company, but were managed and controlled by the said Chicago, Milwaukee & St. Paul Railway Company, as the equitable owner thereof, but in the name of said Southern Minnesota Railway Company.

15th. The said defendants, further answering say, that afterwards, and on the 5th day of January, 1885, the said Chicago, Milwaukee & St. Paul Railway Company, acting in the

name of the Southern Minnesota Railway Company, by contract in writing, agreed to sell the said tract of land in question, to the defendant, A. Boyesen, for the sum of $480.00, to be thereafter paid in installments at various times, and upon such payments being made agreed to convey said land to such purchaser, a copy of which said contract is hereto annexed, and marked Exhibit "A." That on 6th day of January, 1885, said A. Boyesen, with the consent of said defendants, assigned said contract and all his right, title, and interest in and to said land thereunder, to N. C. Fredericksen, and on the 1st day of April, 1885, the said N. C. Fredericksen assigned said contract, and all his rights, title and interest in and to said tract thereunder to said defendant, Thomas S. Thomson, and afterwards on the 3rd day of February, 1888, the said Thomson assigned the same to O. C. Erichsrud, and that as these defendants are informed and believe, the assignment to O. C. Erichsrud was made by said Thomson for the purpose of securing money at that time borrowed of said Erichsrud to pay the balance due on said contract to these defendants,
34 and afterwards and on the 14th day of February, 1888, the said Erichsrud paid the balance due on said contract to these defendants.

That after the making of the contract between the defendants Southern Minnesota Railroad Company and A. Boyesen, these defendants, for the reasons entirely separate and apart from the matters here in controversy, deemed it advisable that title to the lands standing in the name of the Southern Minnesota Railroad Company, which were purchased by the defendants Chicago, Milwaukee & St. Paul Railway Company on the 1st day of January, 1880, should be transferred in form to the Chicago, Milwaukee & St. Paul Railway Company, and in pursuance of that determination, the lands in question, with the other lands so standing in the name of said Southern Minnesota Railway Company, were by deed conveyed to the defendant Chicago, Milwaukee & St. Paul Railway Company, the lands in question being conveyed subject to the contract so as aforesaid made with A. Boyesen, and preserving his rights and the rights of his assigns in said contract, and when full payment had been made on said contract, a deed of said premises to said Erichsrud was executed in the name of the defendant Chicago, Milwaukee & St. Paul Railway Company to him and as these defendants believe he holds said lands for said Thomson, and as security for the money advanced by him for said Thomson in payment of the balance due on said contract.

The said defendants further say that as to the allegation that Thomson assigned said contract to Erichsrud to secure prior

indebtedness owing by said Thomson, these defendants have no knowledge or information, and therefore deny the same.

35 The defendants, on their knowledge as to themselves and on their information and belief as to the others depending, deny that at the time of making said contract with Boyesen that they or any or either of them had any knowledge that there was any dispute as to the title of said land, or any infirmity in the title thereto, or that they had any knowledge that the certification of said real estate to the State of Minnesota for the benefit of said Railway Company, was improper, and without authority of law, but on the contrary that said Boyesen and Thomson were bona fide purchasers thereof without any knowledge or information that their title was in any manner defective, and claim that all their action in the matter of purchasing and paying for said land was in good faith.

The Chicago, Milwaukee & St. Paul Railway Company, defendant on its knowledge, and the other defendants, on information and belief, deny that it is now, or ever was, the owner of the grant by Act of Congress of July, 1866, instead of the aforesaid Southern Minnesota Railroad Company, and deny that the Southern Minnesota Railway Company was ever the owner of said grant. The said Chicago, Milwaukee & St. Paul Railway Company, on knowledge, and the other defendant, on information and belief deny that it ever became the successor in interest of said company, or either of them in and to said grant, or entitled to all or any of the benefits, and charged with all or any of the conditions which before it became such successor, were enjoyed by and charged upon its said predecessors, or either of them, or that it now stands in place of the Southern Minnesota Railway Company, or of the said Southern Minnesota Railroad Company, with
36 regard to said grant, or the land granted and the certification made, as aforesaid, of the tract hereinbefore described, or any other part or portion of said grant. That neither this defendant, the Chicago, Milwaukee & St. Paul Railway Company or the Southern Minnesota Railway Company, was ever the beneficiary of the grant made by Congress to the State of Minnesota, but that the same was conferred by the State of Minnesota upon the Southern Minnesota Railroad Company, and that these defendants, or either of them, have no connection whatever therewith, except that in the usual manner they have purchased some of the lands conveyed by said grant, as above described, after it had been conveyed to said Southern Minnesota Railroad Company. These defendants, further answering, say that they have no knowledge as to the action of the Secretary of the Interior, under the

Act of Congress, approved March 3rd, 1887, but say whatever action was taken thereunder by him, was without authority and void, and needs no answer from this defendant.

The defendants further say that the land grant to the Southern Minnesota Railroad Company was not within the terms of the Act of March 3rd, 1887: that said grant was not an unadjusted grant: that the grant was adjusted nearly twenty years prior to the passage of that act, and that the beneficiary of said grant is not now before the court, if in existence, and the defendants submit that there is a defect of parties in this action for the reason that the said Southern Minnesota Railroad Company, the beneficiary of said grant, is not before the court.

The said defendants, further answering, say that the first knowledge that any of these defendants ever had of the
37 claim of the said Michael Donovan was the bringing of a suit by him in the District Court of Minnesota against Thomas Thomson, in regard to the possession and ownership of this tract of land. That said action was brought by the said Michael Donovan against Thomas Thomson, in the District Court of Minnesota, a court of competent jurisdiction, and which had jurisdiction of the parties, and subject matter. That said suit was brought in January, 1886. That the declaration therein made was that the said Donovan had been in the possession of the said premises for a long time prior thereto, and was entitled to such possession and occupation. That he made improvements thereon, and settled upon the land in 1867, and further alleged that in April, 1885, the defendant, Thomas Thomson, unlawfully entered upon said premises, and still unlawfully holds possession thereof, and gives out and claims that he has purchased the same to plaintiff's great damage, and prayed judgment for the possession of said premises, and that damages should be awarded to him by said court. This defendant, Thomson, appeared and answered said suit, alleged his right and title thereto under the said cotnract so as aforesaid given to the said Boyesen, and that he was entitled to the possession thereof. The issue so joined was tried in the said District Court in the County of Faribault, State of Wisconsin, and a judgment rendered in favor of defendant Thomson, and it is claimed and insisted by these defendants that said judgment is a complete bar to any right, title or interest of the said Donovan in the said premises.

38 And these defendants, further answering the allegations in said bill of complaint that said grant was unadjusted at the time of the passage of the Act of Congress approved March 3rd, 1887, referred to in said bill, say that said land grant was adjusted in the usual manner of adjusting

such grants, and within five years after the passage of the Act making said grant. That adjustments of land grants are matters in charge of the Land Department of the government, and that all adjustments are made by the Commissioner of the General Land Office and his subordinates, and in his office. That adjustments of land grants are made in said offices by the officers employed therein by an examination and determination as to each particular section or government subdivision of said grant on inspection of the map of [definate] location. That there is no such thing known to the law or practice of said department as the adjustment of any particular land grant as an entirety, but that the adjustments take place in regard to each specific section or government subdivision of the lands in such grant separately and that when an adjustment of any section or government subdivision has been decided upon, the adjustment as to that section or government subdivision is completed and finished. That no lands were ever certified or conveyed by the government to the State under any such land grant, until such adjustment as to the land so certified or conveyed had been made and completed. That such certifications or conveyances by the United States to the State in pursuance of such grants follow the adjustments made by the General Land Office, and never precede them and are made at different times. That after such conveyance or certification by the United States of any particular section
39 or government subdivision of lands in any land grant to the State to which it is granted neither the Commissioner of the General Land Office, or any other officer of the government has any further power or control in regard to it, and cannot thereafter make any additional or further adjustment or re-adjustment in regard to such lands. That such adjustment as to land in question was made by the General Land Office, prior to the certification thereof by the Secretary of the Interior to the State of Minnesota and prior to the 29th day of November, 1870. That it was selected as a part of the indemnity lands of said grant and in pursuance of such selection was subsequently, and on the 25th day of March, 1871, certified to the State of Minnesota. But there are no records or books kept in the office of the Commissioner of the General Land Office other than those showing the adjustment of the said sections or government subdivisions of land, as above described, and that there is no such thing known at the General Land Office as a general adjustment of the lands in any other manner than above specified relating to each particular piece or parcel of said land, and that there are no books showing there has been a general adjustment of any land grant, or specifying a time when it took place, but all the land grants made by the Congress of the United States, including

the grant in 1850 to the Illinois Central Railroad, still remain without any other record in regard to the adjustment thereof than such as is above stated, and it is not probable that any such books will ever be opened. These defendants therefore deny that this grant was unadjusted.

40 And these defendants further answering say that the east half of the northwest quarter of Section 35, Township 101, North, Range, 28, West, 5th P. M. Minnesota, is within the indemnity limits of said grant so as aforesaid made to the State of Minnesota. That on the 29th day of November, 1870, it was a part and parcel of the public lands of the United States within said indemnity limits, subject to entry by any person entitled to enter public lands, and to selection by said Southern Minnesota Railroad Company, as lieu lands in the place of lands sold or otherwise disposed of at the time of making said grant in the same manner as all the other unoccupied lands in said indemnity limits and in no manner distinguished therefrom. That there was nothing to show that said land was not subject to selection for the purposes of such indemnity. That by the uniform practice of the Land Department in all cases prior to said selection, and subsequent to the present time it had been the uniform course and practice of the government to hold such land upon which an entry had been made and subsequently cancelled subject to such selection, and in pursuance of that uniform course and practice of the Department the Land Office recognized the selection so made, and the same was in pursuance thereof, certified to the State of Minnesota under said grant, and subsequently conveyed by said State to the said Southern Minnesota Railroad Company, and by said Company in good faith conveyed to the present holders of said grant, who have ever since been in the actual and peaceful possession thereof. The commissioner of the general land office in his opinion in this case recognizes this practice as prevailing in his department
41 in 1889 and the Secretary of the Interior makes no objection but recognizes this rule in the same case.

And these defendants further answering deny, all and singular, the claim of the said Michael Donovan to the said lands, or any portion thereof, and further say that if he ever had any claim, right or interest therein, that the same is barred by the statute of limitations, and that it is stale and should not be enforced in a court of equity, and cannot be enforced by complainant for Donovan's benefit. That the Southern Minnesota Railroad Company acquired title to said land more than twenty years prior to the commencement of this suit, and any

claim that said Michael Donovan might have had, or now has to said lands is barred by the Statute of the State of Minnesota, and is stale and should not be enforced in this Honorable Court.

And these defendants further answering say that at the time this land was selected by the said Southern Minnesota Railroad Company under its grant there was nothing in the records of the Land Office showing any claim thereon; that it was selected in good faith and according to the rules and practice of the Land Department in that regard; that similar grants to railroad and other parties have been made by the government for fifty years last past, and have been administered under the rules and regulations as established by the Commissioner of the General Land Office, and during all that time it has been the uniform practice of said department in selecting lands in indemnity limits to allow the bene-
42 ficiary to select any and all lands in said limits upon which there appeared no claim upon the records of said office at the time of selection. And that in regard to such lands as had been theretofore entered as pre-emption or homestead lands, and subsequently cancelled in said limits, it has been the uniform practice of the department to allow lands which had been so entered for homestead or by pre-emption, or other like claims, and afterwards cancelled to be selected as a part of the land grants whenever desired by the company after the cancellation of such claims and the restoration of the said tracts to the public lands. That this rule was applied in this case, not only at the time of the origianl selection and certification of the land in question, but afterwards in 1889. When application was made in this particular case under the said laws of 1887, the Commissioner of the General Land Office in referring to the matter in his opinion of February 14th, 1889, says:

"No claim for the land (this land) appeared upon the official records when it was selected and certified for railroad purposes."

That said decision was taken to the Secretary of the Interior, and although reversed on another point, he states the rule of the department in such cases as follows:

"The tract in dispute was excepted from the withdrawal for the benefit of said grant by reason of the entry of Barclay, and after the cancellation of his entry, the tract became subject to selection by the road, or to entry under the homestead and pre-emption laws by the first legal applicant." That the government, in all its departments until the present time, had approved the

right of such selection, and that during the last 50 years
43 an immense number of people have acquired, as they supposed, title to lands for their homesteads selected under such circumstances, and that the rule now contended for, if applied in such cases, will deprive them of their homes and property, which have been acquired in conformity to all the rules and regulations of the government prescribed and adopted in the administration and management of such grants. And these defendants protest that it is beneath the dignity and honor of this great government, even if it has the power to deprive citizens of their homes and possessions on a technicality of this description, where they have complied with the strict rules established by the government, and followed by them in the administration of such grants. That individuals would not be allowed thus to disregard their own rules and settled practice to deprive parties dealing with them of their rights and property, and it is most respectfully submitted, that the government of the United States should not be allowed to ignore its own action for a series of years, and thereby defraud those who have dealt with it, or its grantees, strictly in pursuance of the rules established by it for the government and administration of such affairs, and these defendants further submit that the rights of the defendants in regard to this piece of land, obtained in good faith, in strict conformity with the rules and regulations of the United States, in such cases made and provided cannot be disregarded or set aside by the complainant. That as to these defendants and their grantees and all other purchasers of said land in good faith, the said complainant is estopped to set up or
44 claim that said land was not properly conveyed by it to said Southern Minnesota Railroad Company, or to deny or disregard its rules and practice under said land grant in adjusting said grant or to deny that said land was legally conveyed to the grantor of these defendants. That there was no claim or cloud upon the title of said property at the time it was selected by their grantor under the grant, and that they are protected in their rights under the Registry laws, and the records of the Land Department as purchasers in good faith.

And these defendants deny all unlawful combination and confederacy in the said bill charged; without this that any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of these defendants. All which matters and things these defendants are ready to aver, maintain and prove; as this honorable court shall direct;

and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN R. CAREY,
Solicitor of Counsel for Defendants.

45 United States of America,
Eastern District of Wisconsin—ss.

H. G. Haugan, being duly sworn, deposes and says, that he is Land Commissioner of the defendant, Chicago, Milwaukee & St. Paul Railway Company, and has charge of the land matters of said Company, and is acquainted therewith; that he has personal knowledge of a great part of the matters stated in the foregoing answer relating to the Southern Minnesota Railway Company, and further, this deponent says he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

H. C. HAUGAN.

Subscribed and sworn to before me this 8th day of August, 1894.

[Notarial Seal] CHAS. A. PADLEY,
Notary Public, Milwaukee County, Wis.

46 Schedule "A."

This Agreement, Made this fifth day of January, in the year 1885, between the Southern Minnesota Railway Company, of the first part, and A. Boysen, of Milwaukee, County of Milwaukee, State of Wisconsin, of the second part, Witnesseth, that in consideration of the stipulations herein contained and the payments to be made as hereinafter specified, the first party hereby agrees to sell unto the second party the east half of the northwest quarter of Section No. Thirty-five (35), in Township No. One Hundred and One (101) North, of Range No. Twenty-Eight (28) west of the 5th Principal Meridian, being in Faribault County, State of Minnesota, containing, according to the United States survey, eighty acres, be the same more or less, for the sum of Four Hundred and Eighty Dollars, on which the said second party hath paid the sum of Ninety-four and eighty-seven one-hundredths dollars, together being Eighty Dollars, principal, and interest in advance, to August 18, 1885, at 6 per cent. per annum. And the said second party, in consideration of the premises, hereby agrees to pay to the said first party at the Land Office of said

Company, in Milwaukee, Wisconsin, the following sums of Principal and Interest, at several times named below:

	Day.	Month.	Year.	Principal.	Int.	Amount.
First Payment.....	18th	August	1885	$80.00	$19.20	$99.20
Second do	18th	August	1886	80.00	14.40	94.40
Third do	18th	August	1887	80.00	9.60	89.60
Fourth do	18th	August	1888	80.00	4.80	84.80
Fifth do	18th	August	1889	80.00		80.00

And it being mutually understood that the above premises are sold to said second party for improvement and cultivation, and said second party hereby further agrees and obligates himself, his heirs and assigns, that all improvements placed upon said premises shall remain thereon, and shall not be removed or destroyed until final payment for said land; and further
47 that he will punctually pay said sums of money above specified, as each of the same become due; and that he will regularly and seasonably pay all such taxes and assessments as may be lawfully imposed upon said premises.

In case the said second party, his legal representatives or his assigns shall pay the several sums of money aforesaid punctually, and at the several times above limited, and shall strictly and literally perform all and singular his agreements and stipulations aforesaid, after their true tenor and intent, then the first party will make unto the said second party, his heirs or assigns, (upon request) at the Land Office of the first party, in Milwaukee, Wisconsin, and the surrender of this contract) a Deed conveying said premises in a fee simple, with the ordinary covenants of warranty as to the title at the date of this contract and against any encumbrance placed thereon by the first party between said last date and the date of the Deed, excepting and reserving, however, unto the said party of the first part, its successors and assigns, the right-of-way one hundred feet in width, where the lines of its railway or any of its branches have been constructed over and upon said land, and excepting taxes for 1884.

But in case the second party shall fail to make the payments aforesaid, or any of them, punctually and upon the strict terms and times above limited, or to perform and complete all and each of his agreements and stipulations aforesaid, strictly and literally without any failure or default, the times of the payment being of the essence of this contract, then the first party shall have the right to declare this contract null and void and all the rights and interests hereby created or
48 then existing in favor of said second party, or derived under this Contract shall utterly cease and determine, and the premises hereby contracted shall revert to and revest in said first party (without any declaration of forfeiture, or

act, or re-entry, or without any other act by said first party to be performed, and without any right of said second party for reclamation or compensation for moneys paid or improvements made), as absolutely, fully and perfectly as if this Contract had never been made, which said moneys paid and improvements made are hereby declared to belong to said party of the first part as rents for the use and occupation previously had of said premises by the party of the second part. If, however, the said first party shall elect not to declare this Contract null and void in case the second party shall fail to make the payments, or any of them as above stipulated, the second party agrees to pay interest at the rate of ten per cent, per annum, annually, on all payments of both principal and interest from the date of their maturity.

And it is further mutually covenanted and agreed, by and between the parties hereto, that in case of default in the payments stipulated to be made by the said party of the second part, or any part thereof, and the election of the party of the first part, its representatives or assigns, to consider the foregoing contract of sale at an end, and prior payments forfeited, the said party of the second part, his heirs, representatives or assigns, who may have possession or the right of possession of said premises at the time of such default, or at any time thereafter, shall be considered, and are hereby agreed and declared to be in law and equity, the tenant or tenants
49 at will of the said party of the first part, its representatives and assigns, on a rent equal to an interest of ten per cent per annum, on the whole amount of the purchase money above specified, payable quarter yearly, from the day of such default in payment of principal or interest. And after such default in payment, and election to consider the above contract of sale void, the said party of the first part, its representatives and assigns, shall and may have and exercise all the powers, rights and remedies provided by law or equity, to collect such rent, or to remove such tenant or tenants, the same as if the relation of landlord and tenant, hereby declared, were created by an original absolute lease, for that purpose, on a specified rent, payable quarterly, on a tenure at will. And that in such case the said tenant or tenants shall and will pay, or cause to be paid all taxes and assessments, ordinary and extraordinary, which may be levied or assessed on said premises, or any part thereof, during the continuance of such tenancy; and will not commit or suffer any waste or damage to said premises, or the appurtenances, but will keep and deliver up, on the termination of such tenancy, the said premises and appurtenances in as good order and repair (ordinary wear or decay, and unavoidable injury by the elements excepted), as they were in at the commencement of such tenancy.

And it is further stipulated that no assignment of the premises shall be valid unless the same shall be indorsed hereon, or permanently attached hereto, and countersigned by the Land Commissioner of the Company (for which purpose this contract must be sent to the office of the Company, by mail
50 or otherwise), and that no agreement or conditions, or relations beween the second party and his assignee, or any other person acquiring title or interest from or through him shall preclude the first party from the right to convey the premises to said second party or his assigns, on the surrender of this agreement and the payment of the unpaid portion of the purchase money which may be due to the first party.

In witness of which, the Southern Minnesota Railway Company hath caused these presents in duplicate, to be executed by its Land Commissioner, and the second party hath hereunto set his name on the day and year first above written.

H. G. HAUGAN,
Land Commissioner.
A. BOYSEN,
Purchaser.

Witness:
H. C. Goetz,
C. K. Jackwitz.

I, Tom Tomson and Malena Tomson, his wife, the within named purchaser, for and in consideration of one (1) dollar, do hereby assign and transfer all my right, title, interest and claim in and to the within contract, and the premises therein described, unto O. C. Erichsrud, of Blue Earth City, in the County of Faribault, and State of Minnesota, and to his heirs and assigns forever. And I do hereby authorize the Chicago, Milwaukee & St. Paul Railway Company, to receive from the said O. C. Erichsrud all unpaid balances for said land,
51 and upon the final payment of all purchase money and a full compliance with all the requirements contained in the within agreements, to execute, or cause to be executed to the said O. C. Erichsrud, or his heirs and assigns, a deed for said lands instead of to me.

It is expressly understood that in consenting to recognize this assignment, the officers of this company do not exempt the original purchaser from any of his liabilities under the Contract, but to protect the rights of the assignee, provided he complies with its obligations, and under no circumstances whatever will any assignment of this Contract be considered valid, unless countersigned by the Land Commissioner of this

Company, for which purpose it must be sent to the office of the Company, within twenty days after such assignment.

Given under my hand, this third day of February, A. D. 1888.

TOM (X) TOMSON, [Seal]
MALENA (X) TOMSON, [Seal]

Witness:
John F. Clark,
John K. Johnson.

52 State of Minnesota,
Faribault County—ss.

Before me, F. P. Brown, a Notary Public, in and for said County, this day personally came Tom Tomson and Malena Tomson, his wife, personally known to me to be the identical persons described in the within agreement, and who executed the foregoing assignment, and acknowledged that they signed and delivered the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand this third day of February, A. D. 1888.
[Seal] F. P. BROWN,
Notary Public.

Assignment.

I, N. C. Frederiksen and Ada M. Frederiksen, his wife, the within named purchaser, for and in consideration of five dollars, do hereby assign and transfer all our rights, title, interest and claim in and to the within contract, and the premises therein described, unto Tom Tomson, of Elmore, in the County of Faribault and State of Minnesota, his heirs and assigns forever. And I do hereby authorize the Southern Minnesota Railway Extension Company, to receive from the said Tom Tomson all unpaid balances for said land, and upon the final payment of all purchase money and a full compliance with all the requirements contained in the within agreement, to execute, or cause to be executed, to the said Tom Tomson, his heirs and assigns, a deed for said lands instead of to me.

It is expressly understood that in consenting to recognize this assignment, the officers of this Company do not exempt the original purchaser from any of his liabilities under
53 the Contract, but to protect the rights of the assignee, provided he complies with its obligations, and under no circumstances whatever will any assignment of this Contract be considered valid, unless countersigned by the Land Commissioner of this Company, for which purpose it must be

sent to the office of the company, within twenty days after such assignment.

Given under my hand this first day of April, A. D. 1885.

N. C. FREDERIKSEN,
ADA M. FREDERIKSEN.
By W. H. Morris,
Her Attorney in fact.

Countersigned:
H. O. Haugan,
Land Commissioner.

State of Wisconsin,
Milwaukee County—ss.

Before me, G. E. Weiss, a Notary Public, in and for said County, this day personally came N. C. Frederiksen, and William H. Morris, the attorney in fact of the above named Ada M. Frederiksen, who is personally known to me be the identical persons who executed the foregoing assignment, and acknowledged that they signed and delivered the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand this 28th day of April, A. D. 1886.
[Seal] G. E. WEISS,
Notary Public, Milwaukee County, Wis.

Witness:
H. C. Goetz,
C. P. Egholm.

54 Assignment.

I, A. Boysen the within named purchaser, for and in consideration of two dollars, do hereby assign and transfer all my right, interest and claim in and to the within contract, and the premises therein described, unto N. C. Frederiksen of Chicago, in the County of Cook, and State of Illinois, his heirs and assigns forever. And I do hereby authorize the Southern Minnesota Railway Company to receive from the said N. C. Frederiksen all unpaid balances for said land, and upon the final payment of all purchase money and a full compliance with all the requirements contained in the within agreements, to execute, or cause to be executed, to the said N. C. Frederiksen his heirs and assigns, a deed for said lands instead of to me.

It is expressly understood that in consenting to recognize this assignment, the officers of this Company do not exempt the original purchaser from any of his liabilities under the Contract, but to protect the rights of the assignee, provided

he complies with its obligations, and under no circumstances whatever will any assignment of this contract be considered valid, unless countersigned by the Land Commissioner of this Company, for which purpose it must be sent to the office of the Company within twenty days after such assignment.
Given under my hand, this sixth day of January, A. D. 1885.

A. BOYSEN.

Countersigned,
H. G. Haugan,
Land Commissioner.

55 State of Wisconsin,
Milwaukee County—ss.

Before me, G. E. Weiss, a notary public in and for said County, this day personally came A. Boyesen, who is personally known to me to be the identical person who is described in the within agreement, and who executed the foregoing assignment, and acknowledged that he signed and delivered the same as his free and voluntary act and deed for the uses and purposes therein set forth.
Given under my hand this 10th day of January, A. D. 1885.

[Notarial seal] G. E. WEISS,
Notary Public.

Witness:
H. C. Goetz,
C. R. Jackwitz.

Indorsed: Joint and several answer of the Chicago, Milwaukee & St. Paul Railway Company, and the Southern Minnesota Railway Co. Filed August 11th, 1894. Oscar B. Hillis, Cierk. By Stephen Thorne, Deputy.

And on the 6th of March, 1901, the following Answer of Michael Donovan was filed of record in said cause to wit:

56 Circuit Court of the United States, for the District of Minnesota, Third Division.

The United States of America,
vs.
Chicago, Milwaukee & St. Paul Railway Company, The Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thomson, and O. C. Erichsrud.

The answer of the defendant, Michael Donovan, to the bill of complaint in the above entitled action.

The defendant, Michael Donovan, for answer to said bill of Complaint or to so much thereof as he is advised it is necessary or material for him to answer says:

(1) That he is and at all time hereinafter mentioned was a citizen of the United States and duly qualified to acquire a homestead on the Government lands pursuant to the homestead laws of the United States.

(2) That he served in the late Civil War on the union side in a Wisconsin Regiment for three years.

57 (3) That in the spring of 1867 he came to Minnesota for the purpose of selecting a quarter section of land and settling upon the same and acquiring title thereto under the homestead laws of the United States, and went to the United States Local Land Office at Winnebago City to ascertain what lands of the Government were subject to be so entered, and that he learned that the E. ½ of the N. W. ¼, Section 35, Town 101 N., Range 28 West, and the adjoining east half of the southwest quarter in Section 26, same Town and Range were subject to entry under said homestead laws, although one Luman Barkley had entered the same but had adandoned his entry for more than six months and had left the country and had written back that he should not return to claim the land and that it might be taken by any one else. That this defendant thereupon went and examined the land and being satisfied with it, settled upon it and erected a house on the tract in Section 26 and commenced cultivating both tracts in the year 1867, and in July of that year applied at the proper Local Land Office to enter the same under said homestead laws. That he was informed by said Local Land officers that he could not enter the same until the entry of Barkley was canceled, and that they would immediately take steps to have the same canceled. That he made out a formal written application to enter said tracts of land leaving the date of the same blank to be filled in when he should apply after said Barkley entry was canceled, and that he paid to said Local officers $15.00 being the price of said land and their fees and commissions, and left said written application to enter with them. That said Barkley application to enter said lands was canceled January 14th, 1868.

58 (4) That on the 6th of June, 1868, he again applied to said Local Land officers at their office to enter said lands and to fill the blank date in his previous application and to make the required affidavit, but was then informed by said Local Land officers that said land was within the limits of the grant by the United States to the State of Minnesota to aid in the construction of the Southern Minnesota Railroad, that is, that the tract in Section 35 was within the limits of said grant and could not be entered, but that he could enter the said tract in Section 26, and said officers refunded to him $2.00 of the

money he had previously paid them and no more. That he was informed by some other party that said tract in Section 35 was within the indemnity limits of said Railroad grant and had not been selected by said Company, and that if he held on to it he would ultimately get it. That accordingly, under the advice of said Land officers he entered said tract in Section 26, but continued in the possession, occupancy and cultivation of both of said tracts from that time for more than five years and until in 1885 when he was forcibly excluded from the possession and cultivation of said tract in Section 35 as hereinafter stated.

(5) That he had under plow and in crop about one acre of said land in said Section 35 in 1868, and increased the same to seven acres and had some forty acres of said tract under fence and continued to raise crops and pasture the same every year in connection with his cultivation of said tract in Section 26 for more than five years, and also constructed a drain or ditch through said tract in Section 35 to drain off water.

59 (6) That in 1875, after he had been so in the possession, occupancy and cultivation of said tracts of land for five years, he applied to said Local Land office to make final proof in respect to said tract in Section 26, and made said proof, and acquired a patent for said tract in Section 26 under said homestead laws. That at the time of making said proof in respect to said tract in said Section 26, he also offered to prove his occupancy and cultivation of said tract in said Section 35, and to embrace in his affidavit the requirements of the law in respect thereto and to pay the required fees and commission, but that said Local Land officers refused to take down said proof, or to embrace said tract in his affidavit upon the ground that said tract was not within his entry, but that his application to enter the same has been rejected and that said tract had been certified to the State as appertaining to the grant for said Southern Minnesota railroad; but that this defendant continued in the possession, occupancy and cultivation of said tract in said Section 35 until in 1885, as hereinafter stated.

(7) Further answering, this defendant states on information and belief that said Railroad Company assumed to select said tract of land in said Section 35 in November, 1870 and not before, and that the same was certified to the State for said Company in March, 1871, and was conveyed by the state to said Company in 1872, during all of which time this defendant was in the actual possession, occupancy and cultivation of said tract.

(8) And this defendant further answering, on information and belief states that the said Railroad Company on
60 January 5th, 1885, contracted in writing with one A. Boysen to sell to him said tract of land for $480.00 mostly on time of annual installments; and on the next day that the said Boysen sold and assigned said contract to one N. C. Frederickson, and that in April of the same year, the said Frederickson sold and assigned said contract to the defendant Thomas Thomson, all of whom took said contract while this defendant was in the possession, occupancy and cultivation of said tract and with notice of his equitable rights thereto.

(9) That after the said defendant Thomson became possessed of said contract, he forcibly took possession of said tract of land and excluded this defendant therefrom, claiming that he had a right to the same under said contract, and that he continued to cultivate so much of said land as this defendant had prepared for cultivation and excluded this defendant therefrom, except that he allowed this defendant to keep open and use the said drain or ditch through the same, until in 1888 when he sold and assigned said contract to the defendant, O. C. Erichsrud who thereupon paid the balance due on the said contract and procured a conveyance to himself for said tract from the defendant, the Southern Minnesota Railway Company, which Company claimed to have succeeded to the rights of the said Southern Minnesota Railroad Company.

(10) And this defendant, on information and belief, alleges that the said Erichsrud took said contract from said Thomson in order to secure payment of an indebtedness from said Thomson to him, and with full knowledge and notice of the equitable rights and claim of this defendant to said tract.

(11) That by some arrangement between the said
61 Erichsrud and the said Thomson, the latter continued in the occupancy and cultivation of said land for two or three years after the said Erichrud acquired a conveyance of the same, but never resided upon the same or erected any buildings thereon, and after having so occupied the same under said arrangement with the said Erichsrud for two or three years, he abandoned the same, since which time said tract has not been occupied or cultivated by any one except by this defendant in keeping open and in use said ditch or drain through the same.

(12) That since the commencement of this action, the said O. C. Erichsrud has departed this life intestate, leaving a widow and three children, his only heirs at law, and that in the year 1899, the said widow and heirs of the said O. C. Erichsrud

joined in a deed conveying said tract of land to one Louis K. Woodwick. But this defendant alleges on information and belief that the said Woodwick was not a bona fide purchaser of the same, but took such conveyance in trust for the said widow and heirs of the said Erichsrud, and with full notice and knowledge of the equitable rights and claims of this defendant to said tract.

(13) And this defendant further alleges that in June, 1883, he duly applied to the proper Local Land Office to enter said tract of land in said Section 35 under the Act of March 3rd, 1879, as additional to his final entry of said tract in said section 26. That his said application was refused by said Local Land officers whereupon he appealed to the Commissioner of the General Land Office, where said matter is still pending and undetermined.

62 (14) And this defendant further answering, alleges that in February, 1888, he duly applied to the General Land Office at Washington City, under the Act of Congress of March 3rd, 1887, to have his said application to enter said tract of land in said Section 35 made June 6, 1868, allowed and reinstated and for proper proceedings to be taken by the United States to recover back the title to said land. That said petition and application of this defendant and the matters connected therewith were taken by appeal to the Secretary of the Interior, who on April 1st, 1889, decided that the said aplication of this defendant to enter said tract of land June 6th, 1868, was erroneously rejected and that said tract of land was erroneously certified to the State for said Southern Minnesota Railroad Company, and that the petition of this defendant to have his said application to enter said tract allowed and reinstated and that proceedings by the United States to recover back the title to said land should be allowed, and the said Secretary instructed the Commissioner of the General Land Office to demand from said Railway Companies a reconveyance of the title to said tract of land, and if such demand was refused, to return the papers to his department to be submitted to the Attorney General for the purpose of instituting proceedings to recover back the title to said land under said Act of March 3rd, 1887. That the said Commissioner in pursuance thereof made such demand for the reconveyance of the title to said land, which was refused, whereupon, the said Commissioner returned the papers to the said Secretary of the Interior informing him of his action in the premises and of the refusal of said companies to reconvey the title to said land; whereupon, the said Secretary of the In-

terior transmitted the papers in said matter to the At-
63 torney General with a request that proper proceedings be instituted to recover back the title to said tract of land pursuant to said Act of Congress of March 3rd, 1887; whereupon, the present suit was instituted for that purpose.

(15) And this defendant alleges that said tract of land in said Section 35 is of the value of more than $2,000.00.

(16) Wherefore, this defendant prays that a decree be granted as prayed for in the bill in said action, and that the said conveyance of said tract of land to the said Louis K. Woodwick be declared canceled, null and void, and held for naught, and for such other and further relief as may seem proper in the premises.

MICHAEL DONOVAN.

J. M. GILMAN,
Solicitor & Counsel.

Filed March 6th, 1901. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

And on May 2d, 1901, the following answer of the Erichsruds and Louis W. Woodwick was filed of record in said cause to wit:

64 In the Circuit Court of the United States for the District of Minnesota, Third Division.

The United States of America,
vs.
The Chicago, Milwaukee & St. Paul Railway Company, The Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thomson, O. C. Erichsrud, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson (formerly) Erichsrud, Julia P. Remington (formerly) Erichsrud, and Louis K. Woodwick, Defendants.

The joint and several answers of the defendants, Anna Erichsurd, Addie J. Erichsrud, Mabelle H. Anderson (formerly) Erichsrud, Julia P. Remington (formerly) Erichsrud, and Louis K. Woodwick, herein, to the bill of complaint and supplemental bill of the United States of America against these defendants and others.

These defendants now and at all times hereafter sav-
65 ing and reserving to themselves all manner and benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs said bills of complaint contained, for answer thereto, or unto so much and such parts thereof—as these defendants are advised is material for them to make answer unto, they answer and say:

1st.

They admit the defendant O. C. Erichsrud has departed this life as alleged in said bills of complaint, and they admit that the above named defendants Anna Erichsrud, his widow, and the defendants Addie J. Erichsrud, Mabelle H. Anderson (formerly) Erichsrud, and Julia P. Remington (formerly) Erichsrud, were and are his sole heirs at law, and that said O. C. Erichsrud died intestate.

2nd.

They admit that on the 24th day of May, 1899, these answering defendants Erichsrud joined in a conveyance of the lands described in the bill of complaint, to wit: The East ½ of the Northwest ¼ of Section 35 in Township 101 North of Range No. 28 West in the County of Faribault, State of Minnesota, to the defendant, Louis K. Woodwick. They deny that the said deed of conveyance was made by them, or was received by the defendant Woodwick, at the request of or for the accommodation of the defendants Erichsrud or either of them here answering; or that the same was made or received in trust for them or either of them as alleged in said supplemental bill or otherwise; and these defendants allege in that behalf, that the said deed to the defendant Woodwick was made in the usual course of business between buyer and seller of
66 real estate, and was made in good faith and for a valuable consideration moving from the defendant Woodwick to these answering defendants Erichsrud, to wit: The sum of Two Thousand Dollars in money paid by the defendant Woodwick to the said defendant Erichsrud, which said sum was the reasonable value and worth thereof.

3rd.

These defendants further answering admit that the defendant the Southern Minnesota Railway Company contracted to sell the lands herein described on or about the 5th day of January, 1885, to one A. Boyson, and that said Boyson afterwards with the consent of the said Railway Companies assigned the said contract to one N. C. Frederickson, and that said Frederickson afterwards with the consent of said Companies assigned the same to the defendant herein Thomson, and that afterwards the said Thompson assigned the same to the defendant O. C. Erichsrud in his life time, and that afterwards the said defendant O. C. Erichsrud in his life time paid to the said Companies or one of them the full sum and amount necessary under the terms of said contract to be paid, to wit all the then unpaid portion of the sum of Four Hundred and Eighty Dollars and of the interest thereon, and that on said payment so

made the said Southern Minnesota Railway Company defendant made and executed to the said defendant Erichsrud in his life a conveyance in fee simple of the said tract of land described and set forth and which is the subject of this action.

4th.

These defendants deny upon information and belief that the said defendant Erichsrud deceased took the assignment
67 of the said contract from the said Thompson for the purpose of securing the payment of an indebtedness due from said Thompson to him, or for any purpose other than as an absolute sale to him by said Thompson for all his interest in the said contract and premises described therein, and deny upon their information and belief that the said defendant Erichsrud deceased procured the making of the deed aforesaid by the defendant Railway Company of the said land to him for the purpose of securing the payment of any prior indebtedness due from said Thompson to him.

5th.

These defendants deny that the said defendant Erichsrud deceased took the assignment of said contract and the title to said land by the said conveyance as security for any pre-existing debt from said Thompson or that he ever held the same in trust for the said Thompson or for the benefit of the said Thompson or as a mortgage only; but these defendants aver upon their information and belief that the said assignment and the said conveyance so made whereby the title to said land became and was vested in the said Erichsrud in his life time were respectfully so taken and held as an absolute sale by said Thompson and an absolute purchase by said Erichsrud, in good faith and not otherwise, and that the same was so taken and held by the said Erichsrud without any knowledge or information that the title of the said defendant Southern Minnesota Railway Company, or of any person claiming through or under it, to said land, was in dispute that the certification thereof to the State of Minnesota for the bene-
68 fit of said Company was improper or without authority of law, whether as alleged in said bills of complaint or otherwise, and in reliance upon the action of the Government of the United States the plaintiff herein in the transfer of the title to said land by its certification thereof to the State of Minnesota.

6th.

Further answering these defendants allege and show to this Court, that at the decease of the defendant O. C. Erichsrud, he

was in the quiet and peaceable possession of the premises herein described, and was the legal owner of the same and all thereof, and that after his said decease his estate was duly administered under the authority and jurisdiction of the Probate Court of the County of Faribault, State of Minnesota, and in due course of such administration a final distributive decree and judgment was made and pronounced by the said Probate Court, wherein and whereby the real estate described herein was duly assigned to these defendants Erichsrud as the sole heirs at Law of the said defendant O. C. Erichsrud, deceased; which said decree was made on the 7th day of November, 1888 and was duly recorded in the Register of Deeds Office of the said County of Faribault on the 24th day of May, 1899, in Book 33 of Deeds on Page 33, and the same is now lawfully of record therein.

And the defendants Erichsrud answering herein aver that from the decease of the defendant O. C. Erichsrud until their sale and conveyance to the defendant Woodwick, they were the lawful owners of said tract of land and in the quiet
69 and peaceable possession thereof and of the whole thereof.

7th.

These defendants Erichsrud for themselves further allege that until served with the subpoena herein neither they nor either of them ever had any knowledge or information that the title of the said deceased defendant Erichrud was disputed or claimed by any other person as alleged in said complaint or otherwise, or of the pendency of this action, or of any claim of the defendant Donovan to said lands.

8th.

The defendant Woodwick further answering for himself denies that at the time of taking title to said lands from the defendants Erichsrud as herein alleged or at any other time before service of the subpoena herein he had any knowledge, information or notice of the pendency of this action or of any equitable right or claim of the defendant Donovan to the said land or of any infirmity in the title to said land by him acquired.

9th.

The defendant Woodwick further avers and alleges that he purchased the said land from the defendants Erichsrud in perfect good faith in ignorance of any defect in the title of the said Railway Companies or either of them to said tract of land, and in full reliance upon the action of the Government

of the United States the Plaintiff herein in the transfer of the title to said land by its certification thereof to the State of Minnesota, and further relying upon the title of said defendants Erichsrud to the said land as the same appeared
70 upon the records of the Register of Deeds' Office in the said County of Faribault, and further relying upon the quiet and peaceable possession of the same which the said defendant had enjoyed since the decease of the defendant O. C. Erichsrud; that he paid the defendants Erichsrud full value for the same and took the title thereto solely for his own personal benefit, and not in trust for the said widow and heirs of said deceased defendant Erichsrud or any of them.

Further answering all these defendants allege that as to all the other matters and things alleged in said plaintiffs bills of complaint, both original, amended and supplemental, and which are not herein otherwise answered unto, that they or any of them have no personal knowledge, and on their several information and belief, they severally adopt the joint and several answers of the defendants the Chicago, Milwaukee & St. Paul Railway Company and the Southern Minnesota Railway Company as interposed and filed by their solicitor John W. Cary, Esq., in printed form and they ask that the same be held and considered as a part of this their answer, except in the following parts and portions thereof to wit: The portion thereof commencing with the word "and" in the 26th line of the 11th page thereof, and ending with the word "defendants" in the 29th line of same page, being the words, to wit:

"And that as these defendants are informed and believe the assignment to O. C. Erichsrud was made by said Thompson for the purpose of securing money at that time borrowed of said Erichsrud to pay the balance due on said contract to
71 these defendants;" and also excepting the portion of said answers commencing with the word "and" at the end of the 14th line on the 12th page thereof, and ending with the word "contract" in the 17th line of said page 12, being the words as follows: "And as these defendants believe he holds the said lands for the said Thompson, and as a security for the money advanced by him for said Thompson in payment of the balance due on said contract;" and with the foregoing exceptions these defendants adopt the said answers as part and parcel of their answer to all of said bill of complaint and supplemental bill not herein otherwise answered unto.

These defendants further answering say that as to each and all other matters and things alleged in the said bills of complaint and which are material and necessary for them to

answer unto and which are not herein otherwise answered unto, that they deny the same and each and every thereof.

Wherefor- these defendants ask to be hence dismissed with their costs.

ANDREW C. DUNN,
Solicitor for Defendants, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson nee Erichsrud, Julia P. Remington nee Erichsrud, and Louis K. Woodwick.

Filed May 2nd, 1901. Henry D. Lang, Clerk.

And on May 6th, 1901, the following Replication was filed of record in said cause, to wit:

72 Circuit Court of the United States, District of Minnesota, Third Division.

The United States of America, Complainant,
vs. In Equity.
The Chicago, Milwaukee & St. Paul Ry. Co., Southern Minnesota Ry. Co., Michael Donovan et al., Defendants.

The replication of the above named complainant to the joint and several and separate answers of Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson, Nee Erichsrud, Julia P. Remington, Nee Erichsrud, and Louis K. Woodwick.

This repliant saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, and each and all thereof for replication thereunto, saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answers of the said defendants are each and all uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant avers, and will be ready to aver and prove as this honorable court shall direct and humbly prays as in and by its said bill it has already prayed.

J. M. GILMAN,
Special Solicitor.

Indorsed: Filed May 6th, 1901. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

And on December 29th, 1897, the following replication was filed of record in said cause, to wit:

73 Circuit Court of the United States, District of Minnesota, Second Division.

The United States of America, Complainant,
vs. In Equity.
The Chicago, Milwaukee & St. Paul Railway Company, the Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thomson and O. C. Erichsrud, Defendants.

The replication of the United States of America, complainant, to the joint and several and separate answers of the defendants above named.

This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, and each and all thereof for replication thereunto saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants, are each and all uncertain; untrue and insufficient to be replied unto by this repliant: without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant avers, and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

EDWARD C. STRINGER,
Solicitor for Complainant.

74 District of Minnesota,
Office of Clerk of
U. S. Circuit Court—ss.

Edward C. Stringer came before me personally and being first duly sworn says, that he is the United States Attorney for the District of Minnesota and solicitor for complainant in the above entitled case: that the foregoing pleading is true.

EDWARD C. STRINGER.

Subscribed and sworn before me this 21st day of December, A. D. 1897.

[Seal of Court] HENRY D. LANG,
Clerk, U. S. Circuit Court for the District of Minnesota.

It is hereby stipulated that the above replication may be filed in the above entitled case with the Clerk of said court.

BURTON HANSON &
W. H. NORRIS,
Solicitors for Answering Defendants.

Filed December 29th, 1897. Henry D. Lang, Celrk. By A. O. Eberhardt, Deputy.

And on April 1st, 1901, the following order appointing H. H. Horn, Special Examiner, was entered of record in said cause, to wit:

75 United States Circuit Court, District of Minnesota, Second Division.

United States of America, Complainant,
vs.
Chicago, Milwaukee & St. Paul Railway Co., Southern Minnesota Railway Company, Michael Donovan et als., Defendants.

Pursuant to the stipulation entered into between the respective Solicitors herein, it is hereby ordered that said H. Harcourt Horn, be and he is hereby appointed Special Examiner to take and report the testimony in this case, and return the same to this Court.

Dated March 30, 1901.

WM. LOCHREN, Judge.

Indorsed: Filed April 1st, 1901. Henry D. Lang, Clerk.

And on the same day the following oath of Special Examiner was filed of record in said cause, to wit:

75½ United States Circuit Court, District of Minnesota, Third Division.

United States of America, Complainant,
vs.
Chicago, Milwaukee & St. Paul Railway Company, Southern Minnesota Railway Company, Michael Donovan et al., Defendants.

I hereby solemnly swear that I will duly and faithfully perform the duties of Special Examiner in the above entitled cause to the best of my ability, and that I will uphold the Constitution of the United States.

H. HARCOURT HORN.

Subscribed and sworn to before me this 30th day of March, A. D. 1901.

[Seal of Court] HENRY D. LANG,
Clerk U. S. Circuit Court, District of Minnesota.

Indorsed: Oath of H. H. Horn, Special Examiner. Filed April 1st, 1901. Henry D. Lang, Clerk.

76 United States Circuit Court, District of Minnesota, Third Division.

United States, Complainant,

vs.

Chicago, Milwaukee & St. Paul Railway Company, Michael Donovan et als., Defendants.

Pursuant to notice, stipulation and order in the above entitled cause, the parties thereto met in the village of Winnebago City, Faribault County, Minnesota, and the solicitors on both sides being present, the following proceedings were had in the presence of the duly appointed Special Examiner, H. Harcourt Horn, of the city of St. Paul.

Robert G. Evans, Esq., United District Attorney, and John N. Gilman, Esq., Solicitors for Complainant.

W. H. Norris, Esq., and Andrew C. Dunn, for the Defendants, with the exception of Michael Donovan.

77 Adams H. Bullis, a witness of lawful age produced on the part of the complainant, being duly sworn, testifies as follows:

Examination-in-Chief

By Mr. Gilman:

Q. Were you Register of the United States Land Office in Winnebago City in 1867 and 1868? A. Yes, sir.

Q. I call your attention to an affidavit made by you at one time in connection with the land in controversy in this suit, marked "Exhibit A," and ask you whether that is your original signature? A. Yes, I think it is.

Q. In whose handwriting is the body of that affidavit, do you know? A. It looks like mine.

Q. You think it is yours?

A. I think it is mine, yes, that is my handwriting, I can say I made that affidavit.

Mr. Dunn: Now, that is not your handwriting, not the body of the instrument.

Q. But the signature is yours?

A. Yes, sir, the signature is mine.

Q. Are you acquainted with the Defendant, Michael Donovan? A. Yes, sir.

Q. Do you recollect of Michael Donovan applying to you as Resister of the Local Land Office, or to you and the Receiver in 1867, and also in 1868, to enter under the Homestead Laws of the United States the east half of the Northewest Quarter of Section 35, and the East half of the Southwest quarter of

Section 26, Township 101, Range 28, Faribault County, Minnesota, do you recollect of his applying for that land?

A. Yes, I recollect of his applying for the land.

78 Q. In 1867 and 1868? A. Yes, sir.

Q. I wish you would state what took place at the time of the first application in 1867? What month was it that he applied, do you recollect?

A. No, it was in the summer.

Q. In the summer, what month?

A. I should say, probably June.

Q. What took place at that time?

A. Well, when he applied for that land there was a homestead entry on the land, I think a soldier's homestead entry, as they called it then, I wouldn't be certain, but there was already a homestead entry on it.

Q. Do you recollect the party's name, one party?

A. No.

Q. Was it Barkley?

A. Yes, sir, I guess it was Barkley.

Q. Luman Barkley?

A. Yes, sir. That is a good while to remember back, you know. He applied for the land and, of course, there being an entry, he couldn't take it until the other entry was canceled, so we called, what we called, ordered a trial on it.

Q. What was that for? To have the Barkley entry canceled?

A. It was an application to prove non-residence of the homesteader, and that there had never been any one living on it. And the proof of that was sent to the Department and they canceled the entry on receipt of that proof.

Q. Do you recollect now when that was canceled?

A. No, I do not, it must have been probably nearly a year after, that was about the way they used to run.

Mr. Gilman: It was canceled the 14th of January, 1868, according to the pleadings, the records show that.

Q. What papers were made out at the time Mr. Dono-

79 van first made his application in 1867?

A. There would be a homestead, what we call a homestead affidavit. That was an affidavit of allegiance to the Government, and also an application to enter the land. It was filled out in blank.

Q. That is, you mean the date was left blank?

A. Yes, sir, the date was left blank.

Mr. Dunn: I would like to object to the witness giving any testimony as to the contents of a written paper, on the ground that it is not the best evidence.

Q. Was it signed by him? A. Yes, sir.

Q. It was all filled up in full to enter these tracts of land, except putting in the date of the application?

A. Yes, sir.

Q. Why was it, you say it was left with you as Register of the Local Land Office? A. Yes, sir.

Q. Why was that done?

A. Because the entry couldn't be made until we had notice of the cancellation of the prior entry. It was left with me so that if any other person came up after it was canceled, it would be Government Land, and that being left with me—

Q. It was to head off any other entry?

A. Yes, sir, to head off any other entry.

Q. To head off any other application? A. Yes, sir.

Q. After Barkley's entry was canceled? A. Yes, sir.

Q. As soon as Barkley's entry was canceled and you made his entry on the books of the application for the land, did he pay for the land and the fees incident at that time?

A. I think he did.

80 Q. What became of the application afterwards?

A. I don't know as I can tell you about that.

Q. When did he apply the second time?

A. He applied after the Barkley entry was canceled. He was notified that the Barkley entry was canceled.

Q. He applied then for what? A. To enter the land.

Q. To enter the land under the application which he had made and left with you a long time before?

A. Yes, sir, I presume we made a new application for the entry in that section when he applied.

Q. You had the application for the entry of the land that he had made before? A. Yes, sir.

Q. You had his application for that?

A. Yes, sir, we had his application for the whole land.

Q. For the whole land? A. Yes, sir.

Q. There remained nothing to add to it, except to put in the date of the application? A. That is all.

Q. This application was made when, do you think, what time in 1868?

A. Well, I couldn't tell you, it seems to me some time, I should think it was along in the spring or summer, but I don't recollect these things.

Q. In this affidavit, the date it was made was the 6th of June? A. Yes, probably that is right.

Q. When he applied to enter the two tracts, what was he informed then with reference to whether he could enter this tract on Section 35?

81 A. He was informed that we were instructed not to allow any entries on odd numbered Sections within a certain distance of the railroad.

Q. Was this Section 35 within twenty miles of the railroad, the Southern Minnesota railroad? A. I suppose it was.

Q. It was within the indemnity limits?

A. Yes, sir, within the indemnity limits.

Q. He was told he could not enter that tract because it belonged to the Railroad Company?

A. Yes, sir, that is what he was told.

Q. What was he told with reference to the other tract?

A. It was probable he could enter that, of course.

Q. Did he enter the tract in Section 26 then?

A. I think he did.

Q. Was this application which had been first made out, used, or was it destroyed and a new application made for the entry of the tract in Section 26?

A. I presume it was destroyed, and a new application made, but I couldn't tell you.

Q. That first application would cover both tracts, which was made out in 1867, under which he applied to enter the land in 1886,—You don't know what became of that?

A. No, I do not know; I presume it was destroyed. It was easier to fill out a new one than it was to erase the old one, you know.

Q. If there was a new application made for the tract of land in Section 26, if there was a new application made which embraced only that tract, you assume that a new application was made, because it was easier to do that than it was to erase the tract in Section 35? A. Yes.

82 Q. Who was the Receiver of the Land Office at that time? A. H. W. Holly.

Q. Is he living still? A. He is not.

Q. What relation did he sustain to the Southern Minnesota Ry. Co. at that time? A. He was Chief Engineer, I guess.

Q. Chief Engineer of the Southern Minnesota railroad?

A. Yes, I think so.

Q. This land was within the limits of a grant made by Congress to aid in the construction of the Southern Minnesota railroad, was it? A. Yes.

Q. It was within the indemnity limits? A. Yes.

Q. Was Mr. Holly watchful to secure all the lands he could for that Railroad Company? A. Well, I presume so.

Q. This land at that time had not been selected by the Railroad Company?

Objected to on the ground that the same is a matter of record.

A. No, sir, not until they filed a plat with us and we forwarded it to the Government, a plat where the railroad ran. Of course, when they reported it back the plat was there, and then the land was withdrawn.

Q. It was filed before you went in office there?

A. Oh, no, they filed two plats.

Q. This land grant was in July, 1866?

A. The first plat was not filed until I came into the office. They didn't file it until they got through the survey. They filed it after I came into the office.

83 Q. Do you know whether any one told Mr. Donovan at that time that if he held on to the land he could probably secure a title to it, as it had not been selected by the Railroad Company?

Counsel for Defendants objects to the question as immaterial.

A. I don't understand the question.

Q. Do you know whether any one told Mr. Donovan that he had a right to enter this land in Section 35, and if he held on to it he could secure a title to it, for the reason it had not been selected by the Railroad Company yet?

A. I don't know anything about any one telling him that. I don't know but I might have done it myself. That was my opinion, anyway, at the time.

Q. That it was subject to entry?

A. Yes, I claimed that if they carried those things out, they could get that land. I claimed that these homesteads never belonged to the Railroad Company, but they were prior grants.

Q. That is, you were of the opinion that the rights of the Railroad Company did not attach until the lands were selected? A. Yes. No, that is not.

Mr. Dunn: I do not think the opinion of the witness is a matter of evidence.

Witness: I might have done it and told Mr. Donovan, I having that opinion might have told him just what you said, I don't know about that.

Mr. Dunn: We object to this evidence as immaterial.

84 Q. Do you know, whether Mr. Donovan, at the time he applied to enter this land in 1867, had already located upon it, or was living upon it?

A. I don't know any more than what he told me. I was not on the land myself.

Mr. Dunn: We object to this.

Witness: He claimed to be living on it.

Mr. Dunn: I object to this as incompetent; as hearsay testimony.

Q. He claimed to be living on it?

A. Yes, sir. That was the way all these settlements were made.

Q. Do you know, as a fact that Mr. Donovan continued to live on this land that he entered in Section 26, and also held onto the land that he applied to enter in Section 35? Do you know that fact of your own knowledge? A. No, sir.

Q. How long did you continue in office?

A. I was in office until, I think, the 4th of March or April, 1869.

Q. Who succeeded you in the office?

A. Freeman, E. P. Freeman.

Q. Who was the Receiver?

A. The Receiver was Wakefield.

Q. Who succeeded Freeman when he died?

A. Well, the Land Office was consolidated. Mons Grinnager.

Cross-Examination

By Mr. Dunn:

Q. When did you first know Michael Donovan?

A. I knew him when he came to enter the land, I guess.

Q. When was that? A. 1867.

Q. What time in 1867?

A. I should think the summer of 1867.

Q. You say, you should think; have you any remembrance as to what time it was, at all, whether it was in 1867 or 1868?

A. I cannot remember back as far as that.

85 Q. Have you any remembrance whether it was 1867 or 1868?

A. I know it was 1867, from circumstances.

Q. From circumstances? A. Yes, sir.

Q. What circumstances do you refer to?

A. From the fact of the trial being ordered.

Q. Are you not in the habit of making entries of trials being ordered? A. Yes, sir.

Q. If there should be no entry in any of the books, of any trial being ordered for Mr. Donovan, you would be under a mistake.

A. No, sir, not necessarily, I wouldn't. It was put on a blotter and that might be thrown away at any time, it was not a Government record.

Q. Then there was no record made of any such trial being ordered?

A. There was a record made on a sort of a blotter that we kept for that purpose, of a trial being ordered for so and so at such and such a date, and coming up on another certain date.

Q. That trial came off, did it? A. Yes, sir.

Q. There would be a record of that trial, wouldn't there?

A. There should be a record of the trial. There should be a report of the trial sent on to the Government at Washington.

Q. Do you know whether there was any such trial?

A. There is no doubt there was.

Q. Do you remember there being a trial?

A. I remember Mr. Donovan coming there with his witnesses.

Q. You remember his coming there with his witnesses?

A. Yes, sir.

86 What time was it?

A. 1867, it was sometime in 1867.

Q. What time in 1867? I think you are all off. I have got the record and it does not show any report of the trial. I think you are all wrong upon the proposition of the trial.

A. No, I am all right upon it; I remember sure there was a trial.

Q. There was a report made by the Land Officers of that trial?

A. The evidence would be forwarded to Washington with a recommendation either to cancel or not to cancel.

Q. Was such a report forwarded? A. Yes, sir.

Q. Would not the records show if a trial was ordered upon the request of Mr. Donovan? A. It might not.

Q. Should it not so show? A. I guess not.

Q. Shouldn't the report show that some one initiated that trial?

A. I should think it would. Yes, I should think it would.

Q. Then the report, in your judgment, should show that Mr. Donovan initiated that trial?

A. Yes, I think it should, I couldn't tell you for certain.

Q. That was the usual custom, was it not?

A. I don't know just now, whether it was or not. Yes, sir, the evidence would be all sent on to Washington.

Q. It was not the custom to initiate a trial of your own motion?

A. No, sir, we didn't do that. We wouldn't do it unless Mr. Donovan asked for it, no sir.

Q. If Mr. Donovan ordered that trial, then the report in Washington should show that fact, shouldn't it?

A. Yes, sir I should think so.

Q. To be a proper report it should.

87 A. Yes, sir, I should think so.

Q. If there is no such report then there would be a doubt in your mind as to whether he ordered the trial, wouldn't there? A. No, sir, there would not.

Q. Your opinion would be the same? A. Yes, sir.

Q. And it would be the same whether you made a report or not? A. Yes, sir.

Q. He wouldn't be apt to be having a trial to cancel the entry of this land without your making a report?

A. We never canceled any entry without a trial.

Q. Did you cancel this entry? A. Yes, sir.

Q. You canceled it?

A. Well, it was canceled by the Department.

Q. When was it canceled?

A. That would be in the Department.

Mr. Gilman: I object to this.

Q. I am trying to test your memory.

A. It was canceled before the spring of 1868. These answers we got sometimes they would be two or three months, and sometimes a year before we got the notice of cancellation.

Q. Before you got the notice of cancellation from the Department at Washington? A. Yes, sir.

Q. Did you get a notice of cancellation? A. Yes, sir.

Q. Of this particular entry? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. When did you get it? A. I couldn't tell you.

Q. You can't tell?

A. It would be more than I could do to give just the date at this time.

Q. What makes you think that you got a report of this particular entry? A. What makes me think so?

88 Q. Yes. What circumstance?

A. Because I notified Mr. Donovan that the entry was canceled.

Q. You notified him as soon as you got the report?

A. Soon after yes.

Q. How long after? A. I couldn't tell you that.

Q. You notified him as soon as the report came into the office that the entry was canceled, did you? A. Yes, sir.

Q. You notified Mr. Donovan? A. Yes, sir.

Q. Of that fact? A. Yes, sir.

Q. How long after that did he appear and apply for the land? A. I don't know.

Q. About how long? A. I don't know.

Q. You reported it about when you received it, didn't you?

A. I don't know what time it was.

Q. You notified him immediately?

A. That is the custom, yes, sir.
Q. That is the custom? A. Yes, sir.
Q. So you presume you did? A. I have no doubt I did.
Q. Do you know how long after that notification was made before he appeared? A. I couldn't tell you that.
Q. About how long?
A. I haven't the least idea. It might have been a month and it might have been three months.
Q. And it might have been three days? A. Yes, sir.
Q. How did you notify him, do you know?
A. By letter.
Q. Where was his postoffice, do you know?
A. I guess Blue Earth.
89 Q. Blue Earth City? A. Yes, sir.
Q. Is there any record of this letter that you wrote, this notification A. No.
Q. No record of it? A. No record of that.
Q. Was there any record kept of that first application you claim he made in 1867? A. No, sir.
Q. No record of it? A. No, sir.
Q. Was the application preserved?
A. The application was filed away probably with—
Q. Never mind about probably, I am not asking you about that.
I am asking you for your memory. I don't want probabilities, because that is ridiculous. Was the application preserved to your knowledge, that he made at that time?
A. It was preserved until—
Q. Was it preserved to your knowledge?
A. I don't understand this exactly. It was preserved until he came a second time.
Q. Then it was preserved, was it? Now I am going to ask you what became of it afterwards?
A. It was preserved for that time.
Q. For how long?
A. Until he came there himself and made the second entry.
Q. Do you know about how long that was?
A. No, I don't remember that.
Q. Was there any minute made, you keep what is called a plat book, do you not, in the office of the Land Office, you as Register keep what is called a plat book?
A. We had a plat book and we had also a tract book.
90 both. This, as a matter of fact, was kept in the tract book.
Q. You had a tract book? A. Yes, sir.
Q. On that tract book, didn't it appear that this piece of land in Section 35, had been homesteaded by one Luman Barkley?

A. These homesteaders didn't show on our tract books, and didn't show on our record books. There was never any entry upon the tract book until final proof, but we kept a record of all entries that were made.

Q. Isn't it a fact that your tract book should contain a history of each piece of land, as to what was done with it every time anything was done, isn't that a fact?

A. What we called our Homestead Entry book contained all these things, but not the tract book. The tract books were a different set of books.

Q. What is the object of the tract book?

A. The tract book was to keep track of the final sales of the land.

Q. Simply the final sales? A. Yes, sir.

Q. And nothing intermediate? A. No, sir.

Q. Nothing but the final sales? A. No, sir.

Q. What book did you have to keep track of the intermediate steps in?

A. Well, we had only the Homestead Entry book.

Q. The Homestead Entry book? A. Yes, sir.

Q. That was a book that was kept in the office, was it not?

A. Yes, sir.

Q. And that book should show the fact that this tract had been homesteaded by Luman Barkley, shouldn't it?

A. Yes, sir.

Q. And that book should show also the fact that Mr.
91 Donovan applied to enter that land, should it not?

A. No, sir.

Q. It shouldn't? A. No, sir, it wouldn't show it at all.

Q. Would that book show the cancellation of the Luman Barkley entry?

A. Probably not. It might and it might not.

Q. It might and it might not? A. Yes, sir.

Q. It would show who took the land up?

A. Probably, it might not, probably not.

Q. Then you had no record whereby any of these proceedings of Mr. Donovan could be preserved in your office, had you?

A. No, no more than his application and affidavit were filed and put in a pigeon hole.

Q. You claim now, as Register of the Land Office, that no records were kept of the application of Mr. Donovan, that was made in 1867, do you? A. There was nothing.

Q. There was nothing? A. No, sir.

Q. You are testifying entirely from memory upon that proposition, are you? A. Yes, sir.

Q. You know nothing at all what became of that so-called application that you claim was made there? A. No, sir.

Q. Do you know that it was destroyed? A. No, sir.

Q. You don't know but what it is kept, do you, until this day? A. Oh, I am sure it wouldn't be kept.

Q. You are sure it wouldn't be kept? A. Yes, sir.

Q. You don't know that, you don't know but it was kept?

A. It was usual for me to destroy those things, throw them on the floor.

Q. To destroy the application of a man who would come to buy land from the Government, throw it upon the floor? A. Yes, sir.

Q. Then when you threw it upon the floor, it was considered an abandoned application?

A. No, sir, it was no application at all.

Q. It was considered as having fulfilled its functions?

A. Yes, sir.

Q. As useless? A. Yes, sir, it was considered useless.

Q. And of no avail whatever? A. No, sir.

Q. When Mr. Donovan came there, as you say in 1857, where was the Land Office at that time? A. Where was it?

Q. Yes. A. It was down at the end of this street here.

Q. In this village? A. Yes, sir.

Q. Winnebago city? A. Yes, sir.

Q. Were you present when he first came in, or was Mr. Hadly? A. I was always present.

Q. You were always present? A. Yes, sir.

Q. Hadly was not always present?

A. Hadly, he was hardly ever an hour in the office during business hours.

Q. He wasn't much in the office?

A. He was away generally until sometime at the end of the month. You will remember I was doing the business for the Register and Receiver both.

Q. You did the business both of the Register and Receiver?

A. Yes, sir, he was off all the time upon railroad business.

Q. Not all the time?

A. He came in at times, enough to send the reports, etc.

Q. He was gone a great deal of the time, that is true?

A. He was gone all of the time nearly.

Q. Yes, he was away a good deal, I know that.

A. He was home the last of the month to make out his reports.

Q. Then when Mr. Hadly was gone, most of the business you attended to, you transacted most of the business of the office? A. Yes, sir.

Q. I think I remember you did the largest part of the work, that is true. Do you remember who, if any one, made the application, or wrote the application for Mr. Donovan, if one was made? A. I wrote it.

Q. Do you remember that distinctly, do you remember that you did, or do you just suppose you did?

A. Well, I have no doubt I did.

Q. You have a distinct remembrance of it? A. No, sir.

Q. Of that particular act? A. No, sir.

Q. Have you a particular and distinct remembrance of the contents of the paper?

A. Yes, I know what the contents of the paper would be.

Q. But have you a distinct remembrance of what the contents of the paper were?

A. I know about what the contents were.

Q. You know what they ought to be; but have you a distinct remembrance of what they were?

A. I have got a remembrance about that, because Mr. Donovan and I talked it over, and my memory has been renewed a good many times since it happened, you know.

Q. What I want to know is, have you any distinct remembrance of the contents and conditions of that paper?

A. I remember the description of the land, yes.

Q. What was the description of the land? Give it
94 to us if you remember it? A. I can't do it.

Q. Then you don't remember it, do you? Of course you don't? A. I don't remember that.

Q. Then you don't remember it, do you? Of course you don't. A. I don't remember that.

Q. I knew you couldn't do it. You have no remembrance of the contents of that paper, because you can't remember the description of the land he wanted.

A. No, sir, I can remember he wanted this land in these Sections.

Q. What sections? A. Twenty-six and twenty-five.

Q. Twenty-six and twenty-five? A. Yes, sir.

Mr. Gilamn: Thirty-five.

Q. I am testing your recollection a little.

A. I know enough to know what sections join each other.

Q. Then your memory is such that you cannot distinctly state the contents of that paper, you can't give the contents of it. A. I can give the general contents, that's all.

Q. You know there was an application?

A. There was an application, yes, sir, and I know what the application was, you know, except as far as the details of the description.

Q. Let me ask you this question: If Mr. Donovan came there and asked you to be allowed to enter this land in question here, was the land at that time when he first came there, open for selection, or was it not, in 1867?

A. It was open for selection.

Q. It was open for selection?
A. It was open, as near as I—
Q. You say it was?

Mr. Gilman: Let him answer the question.

Q. Do you say it was?

A. It would have been open except for the home-
95 stead entry already upon it.

Q. Then it was not open for selection?
A. No, sir, because of this—
Q. It was not. That is enough answer to the question. It was not, that is right? A. It was not, no, sir.
Q. When he came there the second time, you say he came the second time sometime after that? A. Yes, sir.
Q. Was it then open for selection, or was it not?
A. Well, as far as our instructions were concerned, it was only open on one eighty.
Q. And on the other eighty?
A. So far the homestead entry is concerned, it is not.
Q. It was open then for entry as far as your instructions were concerned, on one eighty? A. Yes, sir.
Q. And not open on the other eighty? A. Yes, sir.
Q. Then what did Mr. Donovan do? A. Took the eighty.
Q. Which eighty? A. That in twenty-six.
Q. He took the eighty in Section 26? A. Yes, sir.
Q. He made a new application? A. Certainly.
Q. He made a new application on the eighty in 26?
A. Yes, sir, that is right.
Q. And that is all of your connection with it?
A. That is as far as I know anything about it.
Q. Were you in the office when he proved up on his homestead? A. No, sir.
Q. That was after your time? A. Yes.

Q. Do you remember of there being a trial as to the
96 cancellation of that Luman Barkley entry?

A. I remember Mr. Donovan coming to the office with his witnesses.
Q. Do you remember who those witnesses were?
A. No, sir.
Q. You can't remember that? A. No, sir.
Q. What time did he come with his witnesses, do you remember? A. I can't give the date.
Q. About what time?
A. I can't give you the date, I should think in the summer of 1867.
Q. In the summer of 1867? A. Yes, sir.
Q. About what time?

A. Well, it was in the summer. I think I would average it about the middle of the summer, if I was averaging it.

Q. You don't know the names of the witnesses?

A. I don't remember the names of the witnesses, no.

Q. Did the trial take place in the office? A. Yes, sir.

Q. Before whom? A. Before me, I took the evidence.

Q. Was Mr. Donovan a witness, do you remember?

A. Was he a witness at that time?

Q. Yes, was he a witness on the trial? A. I think not.

Q. Wasn't he at the trial himself?

A. I think so, yes he was.

Q. He was there? A. Yes, sir.

Q. Was he not a witness on the trial himself?

A. I think not.

Q. You think he was not sworn as a witness?

A. I should think not.

Q. Why, isn't it the proper thing for him to be sworn as a witness?

A. It would be proper, but we seldom swore the man who claimed the land; we seldom took his evidence.

97 Q. Wouldn't it have been proper for him to testify as to the improvement he put on the land?

A. It might have been, but our custom was to take disinterested evidence, and he couldn't very well swear that the man hadn't been on the land.

Q. You think he was not a witness?

A. I am pretty sure he was not a witness.

Q. That evidence would be all reported to Washington, would it not?

A. Yes, sir, a copy of the evidence would be sent to Washington.

Q. A copy of the evidence? Wouldn't the evidence be sent down to Washington as the evidence, that would be the original evidence?

A. It would be the original evidence, yes sir.

Q. The evidence would be reported itself as the report?

A. Yes, sir.

Q. You reported on each case? A. Yes, sir.

Q. It was yours and the Receiver's, yours as Register, and the report of the Receiver? A. Yes, sir.

Q. As to each case? A. Yes, sir.

Q. Do you remember whether there was any notice given of that trial? A. Yes.

Q. How was that notice given, do you remember?

A. It was given in the papers?

Q. In the paper? A. Yes, sir.

Q. What paper?

A. I guess "The Freehomesteader," it was called at the time, I think that was the paper here.

Q. It was a paper published here in Winnebago.

98 A. Yes, sir, it was not necessary to give notice, but we generally did.

Q. You think the notice was published?

A. I think I was, I couldn't tell you.

Q. Was there any other way in which notice of trial was given? A. We sometimes wrote notices.

Q. You sometimes wrote notices?

A. There was no other way. That is the way it was done.

Q. I mean as to that particular trial?

A. No, there was no other way than that.

Q. Your remembrance is that notice of the trial was given by publication in the paper?

A. That is the way almost every notice was given, by publication in the paper.

Q. I am asking you about the notice of this particular trial? Have you any remembrance that the notice was given?

A. We gave the paper all the notices. All the notices were given in the paper at that time. Mr. Holly's brother-in-law was running the paper, and he had to have the money.

Q. Who paid for that notice? Do you know who paid for the notice, who paid for publishing that notice?

A. Why, the officers paid for it, and Mr. Donovan paid the officers.

Q. Did Mr. Donovan pay the officers? A. Yes, sir.

Q. Did he pay you? A. He had to do it.

Q. Have you a distinct recollection of his paying you that?

A. Yes, sir.

Q. How much did he pay you?

A. He paid us for ordering the trial and for the notice, $9.00.

Q. How much was it?

99 A. Nine dollars. That was a matter we set the figure on, on these things, we were always modest. There was no ruling of the Department about it.

Redirect Examination

By Mr. Gilman:

Q. Did you have blanks, printed applications for homestead entry, in your office? A. Yes, sir.

Q. So when applications were made you simply had to fill up a printed blank?

A. Yes, all furnished by the Government. We had blanks for those applications.

Q. Furnished by the Government? A. Yes, sir.

Recross-Examination

By Mr. Dunn:

Q. Do I understand your testimony that when he made his application he made an order for the trial at that time?

A. He made an application at the same time.

Q. He made an application at the same time? A. Yes, sir.

Q. I thought you said at that time he simply made application for the trial?

A. He didn't make an application at the time he ordered the trial.

Q. I understood you to say he did?

A. No, at the time the trial came off, he made application after the evidence was in. We knew what the report was going to be, and he made application for the entries, supposing it was going to go through.

Q. But he made an order for the trial, and he made an application on the day of the trial?

A. Yes, sir, the day of the trial he made his application, whatever day that was.

100 Q. On the day of the trial at that time he made application, that was how long after he ordered the trial that he made the application?

A. It would be about a month usually.

Q. And at the time he made that application the entry of Luman Barkley had not been canceled? A. No, sir.

Q. So he couldn't have taken the land at that time, under any circumstances, because there was still a homestead entry upon it? A. No, sir.

Q. That is what you call the first application?

A. Yes, sir, that was the first application.

Q. After you notified him you say he came again to enter the land? A. Yes, sir.

Q. Did you get your instructions from the General Land Office, relative to withdrawing the lands in the odd sections? I mean relative to the time when this trial was ordered, was it before or after?

A. Well, it was after the trial was ordered.

Q. What is that?

A. It was after the trial sometime; before we got instructions from the general Land Office. We didn't get any instructions until after Mr. Donovan had ordered the trial.

Q. You didn't get any instructions to withdraw these lands in the odd sections in the indemnity until after Mr. Donovan had ordered this trial, you say? A. No, sir.

Q. Do you remember that distinctly? A. Yes.

Q. When did you get your orders to withdraw?

A. I couldn't tell you the date.

Q. About when?

A. They filed two plats, and there were two different orders with reference to them. I couldn't give you the dates.

101 Q. You don't know the dates of the instructions, do you?

Mr. Gilman: They are in the pleadings.

A. The order of withdrawing them would date from the day we acknowledged the receipt of it; from the day we acknowledged the receipt of that order. Any entry that was made up to the time we acknowledged the receipt, would be good.

Q. Now, I want to ask you about the application, you say at the time he ordered the trial this application was not there, it was destroyed as being of no avail? A. Yes, sir.

Q. That is when he came the second time? A. Yes, sir.

Q. And that application was made for the eighty in Section 26? A. Yes, sir.

ADAMS H. BULLIS.

102 Pursuant to notice in the above entitled case, certain depositions are now taken before the same Special Examiner by the same solicitors at the village of Blue Earth, Faribault County, Minnesota, on the 8th day of May, 1901, as follows:

Michael Donovan, a witness of lawful age, and one of the defendants in this cause, is produced on part of the complainant, and being duly sworn testifies as follows:

Examination in Chief

By Mr. Gilman:

Q. Where did you live before coming to Minnesota?

A. In the state of Wisconsin.

Q. What year did you move to Minnesota?

A. In 1867.

Q. Were you married then? A. Yes, sir.

Q. Did your family come with you there? A. Yes, sir.

Q. To what particular point in Minnesota did you come then?

A. I came to the town of Pilot Grove, Faribault County.

Q. Had you any relatives living there then?

A. Yes, I had a brother and his family.

Q. For what purpose did you come to Minnesota then?

A. To get a homestead.

Q. Under the United States homestead laws?

A. Yes, sir.

Q. Did you locate that year upon some Government land?

A. Yes, sir.

Q. Will you give the description of it?

A. It was the east half of the southwest quarter of section 26, and the east half of the northwest quarter of Section 35, Town 101, range 28, Pilot Grove.

103 Q. In Faribault County, Minnesota?

A. Yes, sir, in Faribault County, Minnesota.

Q. How did you happen to locate upon that land? Did you hear anything about it before you located upon it?

A. I heard it was vacant, and I went out and seen it, and it suited me.

Q. Then did you go to the United States Land Office?

A. I went to the United States Land Office in Winnebago City July 6th.

Q. What year? A. 1867.

Q. For what purpose?

A. To see if I could get the land or select it and enter it as a homestead.

Q. What did you learn there?

A. I learned that the land was occupied by one Luman Barkley. He occupied it and entered it. He had entered the claim in 1866.

Q. It was entered by whom? A. By one Luman Barkley.

Q. What were you told?

A. I was told that if I could prove that he had abandoned it, I could get an order of trial on the land, and I did order a trial.

Q. Did you learn that he had abandoned it?

A. Yes, sir, before I went there I was told so by some of my neighbors.

Q. That he had abandoned it?

A. That he had abandoned it.

Q. How long had he been absent from it?

A. He had abandoned it about eight months.

Q. Did you know anything about where he was?

A. I learned from his connections that he was in Canada, and that he had sent word, his cousins told me he had written back that his mother was sick, and he couldn't hold

104 the claim, and that anybody who wanted it could take it, he was not coming back. Then you went to the Land Office? A. Yes, sir, then I went to the Land Office on the 6th day of July.

Q. And told them what you had heard? A. Yes, sir.

Q. And they said you couldn't enter it until his claim was cancelled? A. Yes, sir, until his claim was canceled.

Q. What did they say about the cancelation?

A. They said I should order a trial on the place and bring witnesses to prove that it was abandoned, that he had abandoned the claim.

Q. What was then done about getting the proof of his abandonment, what did you do?

A. I ordered a trial on the place and then went on the quarter.

Q. To prove that he had abandoned it?

A. Yes, sir, to prove that he had abandoned it.

Q. What did you pay for expenses?

A. I paid $9.00 for expenses. The trial was to come off four weeks to my knowledge after that. The trial came off in August, I think the first week in August, and then I went there with my witnesses.

Q. Was the notice published?

A. Yes, sir, notice was published.

Q. Where?

A. In the Winnebago paper. I was served with a copy of it, for three weeks successively.

Q. When the trial came up, it came off before whom?

A. Before Mr. Bullis.

Q. What was proved there?

A. It was proved that by both those witnesses, that he had abandoned the land.

105 Mr. Dunn: We object to this testimony, because the same is a matter of record.

Q. Was there proof offered that he had abandoned the land? A. Yes, sir, proof was offered.

Q. Who were the witnesses?

A. John Donovan and Michael Dullard.

Q. Is that John Donovan any relation of yours?

A. Yes, sir.

Q. What relation?

A. He is my brother's son, he is my nephew.

Q. When was that proof taken, did you say?

A. About that claim, do you mean?

Q. Yes.

A. The witnesses appeared, it was about the first week in August, it was about four weeks after I went up to see about the claim. I went up on the 6th day of July, and in four weeks after that time the trial came off and my witnesses appeared there.

Q. After the testimony was taken, what was done about your making application to enter the land?

A. After the trial was over with, Mr. Bullis took my application and I paid him $15.00.

Q. Your aplication to enter what?

A. To enter that quarter section of land.

Q. The same quarter section of land that was in dispute, that you had the trial on, that Barkley entered? A. Yes, sir.

Q. Was that application in writing? A. Yes sir, in writing.

Q. Did you sign it? A. I did, sir.

Q. Do you recollect whether it was fully filled out, or whether any blanks were left? A. Well, I couldn't say.

Q. As to the date of it?

A. I don't think it was dated, it was left blank I
106 think. I signed the application so that when it would be canceled in Washington immediately after, there might be no mistake but what I would get the claim.

Q. Was that application left with the local Land Officers?

A. The application was signed by me and the $15.00 left there.

Q. The application was left with whom?

A. With Mr. Bullis.

Q. Where did you go then, had you already located upon the land?

A. I had located on the land, right after the trial I built a house.

Q. In 1867?

A. In 1867 I built a house and I broke on the land.

Q. When did you learn that the Barkley entry had been canceled? A. When did I learn that?

Q. Yes. A. Mr. Bullis notified me that it was canceled.

Q. Do you recollect when it was canceled?

A. It was canceled some time in January.

Q. What year? A. 1868.

Q. When did you go to the Land Office again and apply to enter the land?

A. I applied at the Land Office, Mr. Bullis wrote me and I applied, which was about the first week in June.

Q. What year?

A. 1868. I think it must have been about the 5th of June as near as I can recollect, the first week in June.

Q. Did you file an application to enter your previous application at that time? A. Yes, sir.

Q. What did you hear?

A. Why, Mr. Bullis informed me I couldn't get the land, the eighty in Section 35.

Q. For what reason? A. It was railroad land.

107 Q. What did he say about the other?

A. He said "you had better take the other eighty, you can't do any better, you had better enter the other eighty," he said. He said, "I advise you to take the eighty,' so I did, and I entered the other eighty.

Q. Did you have any talk with him or any one else, about your right to enter this eighty in Section 35? Were you told

by him or by any one else that if you held on to it you could probably hold it?

Mr. Dunn: I object to any conversation being gone into with any one else except with a Government official, with regard to that matter.

A. I did, with Mr. Bullis, he was a Government official.

Q. What did he say to you?

A. I asked him if the Railroad Company had any claim on that land. He says, "You go on and work it, work that land, and it will be yours if you stick to it." The Railroad Company has no claim upon that land," he says. He says, "Go on and improve that land and work it, you will get the land in time; the Railroad Company has no claim to that land, and it has no right to it."

Mr. Dunn: I move to strike out the answer of the witness as to what Mr. Bullis told him, as immaterial, and not the best evidence.

Q. You made a written application to enter the tract in section 26 then? A. Yes, sir.

Q. Where did you go after that?

A. I went on and built a house on the land.

Q. You went in 1868 you say, you went and lived on the land?

108 A. Yes, sir, built a house and broke on it.

Q. On what tract was the house you built?

A. I built the house on Section 26, because it was a better building spot than on Section 35. I couldn't get water where Mr. Barkley had his house built, so I built on 26.

Q. How far was it from the line of 35, how far was it away?

A. I think it was not more than twenty-five rods from the road to the house.

Q. What did you do with respect to occupying and cultivating that tract of land on Section 35 in the year 1868?

A. In 1868 I broke six acres on Section 26, and mowed the meadow on 35, mowed the grass for my cattle and cows and put up my hay on 35, cut that eighty in 35.

Q. On the eighty acres in Section 35?

A. Yes, sir. On the eighty in Section 35.

Q. Was there any cultivation of any of the land of the eighty acres in Section 35?

A. There was, it was cultivated, Mr. Barkley had broken, I never measured it, I don't think it exceeded, I don't know whether it exceeded an acre. I wouldn't be positive, I never measured it. It looked to me by scanning it over, it was not quite an acre, but very near it. It was quite a nice little piece of land that was broke.

Q. Did you cultivate it?

A. I fenced it in 1868 and cultivated it, put it into potatoes and cabbage and garden stuff, and kept the fence on it for years.

Q. The balance of the eighty in Section 35, how did you cultivate or use that in the year 1868?

109 A. In 1869, the following year, I broke—

Q. What did you do in 1868?

A. In 1868 I broke on Section 26, and the following year I broke on Section 35.

Q. How much did you break in the year 1869?

A. I think between seven and eight acres in the eighty on Section 35.

Q. On Section 35? A. Yes, sir.

Q. How much did you break, did you say?

A. I think seven acres, between seven and eight acres.

Q. And put it in crop, did you put it into anything?

A. Yes, sir, I put in into sod corn, broke it up and put corn onto the sod.

Q. In the next year, 1870, what did you do?,

A. In 1870, I don't know whether it was 1870 or 1871. I broke seven acres more.

Q. On Section 35? A. Yes, sir.

Q. On the eighty on Section 35?

A. Yes, sir. I don't know whether it was 1870 or 1871, I am not certain as to those dates.

Q. How much did you do right along after that, what did you do?

A. I had twenty acres broke on it when Mr. Thompson bought it, twenty acres in all.

Q. I don't want to go that far along just yet. Up to 1875 did you do some breaking and cultivating each year?

A. Not every year. I didn't break every year until 1875, but I had in 1875, I must have had, I didn't have less than sixteen acres broke in 1875.

Q. And how much fence?

A. I had fourteen acres fenced, besides the garden, for pasture, in 1875.

110 Q. Was that cultivated and fenced?

A. No, sir, only the garden spot, less than an acre.

Q. You say you had about fourteen or fifteen acres fenced, besides the garden spot?

A. I had about fourteen, or fifteen, or sixteen acres fenced for pasture.

Q. How much did you have ploughed up and under cultivation, besides the garden spot?

A. About as near as I can say, about sixteen acres.

Q. How was the balance of the ground on Section 35 used, the balance of that eighty?

A. I used it for pasture and hay. I hadn't pasture enough, so I would cut hay and pasture my cattle on it. But cattle ran at large in those days, so I generally cut my hay on it and didn't cut in the meadow. I didn't have many cattle, and I used the meadow for hay.

Q. You exercised control and dominion over the whole of the eighty, did you? A. Yes, sir.

Q. And each year you broke or cultivated more or less?

A. Yes, sir, and put it into crop every year.

Q. Put it into cultivation in connection with the eighty acres in Section 26? A. Yes, sir.

Q. When did you make final proof of your occupation and cultivation of the eighty acres in Section 26? A. In 1875.

Q. Do you recollect what month?

A. Well, I think it was in the month of June.

Q. It was in '75? A. Yes, sir.

Q. That you made final proof? A. Final proof.

Q. And you got a patent for that? A. Yes, sir.

111 Q. Under the homestead laws?

A. Under the homestead laws. I think I got a patent in July.

Q. Who were your witnesses to prove your occupation and cultivation of that tract at that time?

A. Patrick Hamill and Owen McLaughlin.

Q. Where was that proof taken, before whom was the proof made?

A. That proof was taken in the old courthouse at Blue Earth.

Q. At Blue Earth.

A. Yes, I think before, I don't know, I think Mons Grinnager. I think he was Receiver then at Worthington, either Register or Receiver, he and Mr. Wakefield were in the office; but it was before him, before Mr. Grinnager, he came down here.

Q. Mr. Grinnager took the testimony here in Blue Earth, did he? A. Yes, sir.

Q. Where was the location of the office then?

A. It was at Worthington, he came from Worthington here.

Q. The Land Office was at Worthington when this proof was made?

A. Yes, sir, I got instructions that the testimony would be taken here in Blue Earth.

Q. And it was taken here? A. Yes, sir.

Q. At the time that testimony was taken, state whether or not you offered also to prove your occupation and cultivation of the eighty acres in Section 35.

A. I did so, I attempted to prove it.
Q. You did what? A. I tried to prove it.
Q. What was said?
A. He said he wouldn't take it, he couldn't accept it because I had not entered that land on Section 35.

112 Mr. Dunn: I object to any testimony with regard to this matter, because Mr. Grinnager is dead.

Q. Why was not the proof taken about this eighty in 35, why did Mr. Grinnager refuse to take it, what was the reason the proof wasn't taken?
A. He said I had not entered that piece of land in 35, and he couldn't accept of it.
Q. And he wouldn't take the testimony?
A. No, sir, he wouldn't take the testimony.
Q. Is Mr. Grinnager living? A. No, sir.
Q. How long ago did he die?
A. I think he died about ten years ago, I am informed.
Q. Is Mr. Hamill living? A. No, sir, he is dead.
Q. How is it about Mr. McLaughlin?
A. He is living, he is here in town.
Q. In Blue Earth? A. Yes, sir.
Q. What is his condition? A. He is pretty feeble.
Q. How is his mind?
A. I don't think it is very bright.
Q. Is he able to be around?
A. I think he is able to be around, but I have not seen him since he came to Blue Earth. I have not seen him for several weeks.
Q. How old is he?
A. He is over 80, 83 or 84 I think, he is somewhere over 80 years old. He has been sick this winter with the grippe, and is in bad shape.
Q. After you had made your final proof of occupation and cultivation of the eighty acres in Section 26, how long did you continue in the occupation and cultivation in connection with that of the eighty acres in Section 35?
113 A. I improved it up until April 1885.
Q. Every year? A. Yes, sir.
Q. Up until 1885? A. Yes, sir.
Q. When did you cease to occupy it after that?
A. Mr. Thompson bought the land, and of course I was dispossessed and had to give it up, and he took possession.
Q. He took possession of the land? A. Yes, sir.
Q. Did you consent that he take possession? A. No, sir.
Q. How did he take possession, what did he do?
A. He went on and improved the land.
Q. How did he get you out of possession?

A. Well, he went on working round, he was hoeing, the men were drinking and I did not like his appearance. I didn't want to get into trouble, so I went him to see if I could get him out.

Q. Did he refuse to let you occupy and cultivate the land?

A. Yes, he said he had bought the land and he wanted to keep me off it; he wanted me to get right off it. He said he bought the land and he wanted me to have nothing more to do with it.

Q. Have you since then occupied or controlled possession of the land in any way? A. Yes, sir.

Q. In what way? A. I possessed on it a good deal, and I run a ditch through the eighty, and I always mowed the woods and cleaned the ditch out every time, every year I kept the ditch in running order right through the eighty.

Q. Have you been in continuous occupation of it?

A. Yes, sir I have not cultivated it.

Q. The remainder of Thompson's claim?

A. Yes, sir, but I have pastured on it, pastured this spring on it and herded my cattle on it every year.

Q. How long did Thompson occupy it?

A. Thompson came there in '80 I think, he must have occupied it—

Q. No, he came there in 1882.

A. 1882, he must have occupied it in all, two or six or seven years I think.

Q. Did he build on it? A. Yes sir.

Q. Did you know when he sold it or assigned his contract to Robinson? A. Yes, sir.

[A.] After Mr. Robinson became the owner of it, did Thompson occupy and cultivate it?

A. Yes sir, he worked it on shares.

Q. How long?

A. I think he cultivated it for either three or four years, about four years after Mr. Robinson bought it.

A. I couldn't say exactly, it seems to me he has worked it for three or four years.

Q. What became of him then? A. He moved away.

Q. How was it occupied after that?

A. When Mrs. Robinson had it she rented it part of the time, she rented it to one of the neighbors there for a cash rent. Then for the last two years it was abandoned, I think, but she sold it. After Thompson left it she had it rented out to Sam Moore, I think for a cash rent part of the time.

Q. What is the land worth in your judgment?

A. Well, the land today wouldn't be worth, I think, any more than $25.00 an acre. It is bad shape. It is all
115 grown up in weeds. It is in bad shape, no cultivation on it for the last year at all.

Q. Did you apply to the Land Department at Washington to have your application to enter this eighty acres on the other Section, section 35, allowed and reinstated? A. Yes, sir.

Q. Did you send on an affidavit in regard to the matter, to the Department, yourself? A. Yes, sir.

Q. In connection with Mr. Bullis' affidavit?

A. Yes, sir, and Mr. McLaughlin's affidavit also.

Q. I call your attention to this affidavit, being the original affidavit of Michael Donovan attached to the affidavit of Mr. Bullis, which was referred to yesterday.

Mr. Dunn: You are not introducing this in evidence now.

Mr. Gilman: No, I am calling his attention to it now, but I shall introduce them in evidence.

Said affidavit presented to the witness is marked "Government Exhibit AA," and the affidavit of A. H. Bullis is marked A.

Q. That is your signature, is that your signature?

A. Yes, sir, that is my signature.

Q. Is that the signature of Mr. McLaughlin.

A. Yes, sir, I was present when he signed it.

Q. Did you send these affidavits on to Washington?

A. Yes, sir, they were sent on by my attorney.

Q. Who was that? A. I think it was Mr. Goodrich.

Mr. Gilman: I will offer in evidence these affidavits which have been marked Government Exhibit A and Government Exhibit AA.

Mr. Dunn: I object to them as immaterial, incom-
116 petent and irrelevant, and as not admissible as affidavits.

Q. Mr. Gilman: If necessary, I can return these affidavits to Washington and get certified copies of them, in place of these originals. The fact is, instead of sending us the copies, they sent the originals. I have letters to that effect. If you are going to object that they are not certified copies from the Department, I will send to Washington and get certified copies of these affidavits.

Mr. Dunn: That is not my objection. The objection goes to the fact that the affidavits, as affidavits, are not admissible anyway; they are not testimony taken.

Mr. Gilman: But they are documents as coming from the Land Department.

Mr. Dunn: Yes, they are documents coming from the Land Department, and of course under certain cases they would be admissible, but I don't think they are admissible in this case for this purpose. I object to them as inadmissable, and also as immaterial.

Mr. Gilman: But not because they are originals and not copies?

Mr. Dunn: Not upon the ground they are not certified copies, because I will take your word for it that they came from there.

Mr. Gilman: You admit they are original documents?

Mr. Dunn: Yes, I don't doubt that. I do not object to them upon the grounds that they are not certified copies.

Mr. Gilman: Do you admit that these indorsements
117 upon them are the indorsements of the Land Department?

Mr. Dunn: I presume so. You say they are, and I don't know anything about that.

Mr. Gilman: This matter is the starting point of this testimony. I will put in the other papers later.

Mr. Dunn: My objection to the testimony goes to the fact that they are inadmissible in any event, whether copies or originals.

Cross Examination

By Mr. Dunn:

Q. When you came to Minnesota in 1867, whose house did you visit first, I mean in Faribault County? A. Visit?

Q. Yes, you had no house of your own? A. No, sir.

Q. Where did you go?

A. The first place I stopped was with Mr. Moore.

Q. What year was that?

A. In 1867; then the next day I went to my brother's.

Q. Where does he live?

A. Pilot Grove, he did then.

Q. Whom did you go to next? What is your brother's name?

A. Dennis Donovan. Then I moved into a vacant house.

Q. What Section did your brother live on in Pilot Grove?

A. I don't recollect, I wouldn't say without the map.

Q. How far from this disputed tract of land?

A. Just exactly, it may be a mile and a half.

Q. Were there any buildings upon this disputed tract of land when you came here in 1867?

A. There were no buildings, there was a lot of logs thrown down that remained there on the ground. I was informed that the building was stolen.

118 Q. Never mind what you were informed about the building being stolen. There was no building.

A. Only those logs were there.

Q. There was no building on the ground?

A. There was no building on the ground erected.

Q. No buildings when you came here? A. No, sir.

Q. You spoke about these logs, where were they, on 35 or on 26? A. On 35.

Q. They were on Section 25? A. Yes, sir.

Q. How far from the line of Section 26 were they?

A. Well, I think they were about fifteen rods from the Section line.

Q. That is, two eighty acres, they are eighty rods wide and a mile long, are they not? A. Yes, sir.

Q. They stand end to end? A. Yes, sir, a mile long and eighty rods wide.

Q. You made some improvements on the land in Section 26, did you not? A. Yes sir, of course I did.

Q. You built your house on Section 26?

A. I built the house on Section 26, yes, sir.

Q. You never built a house on Section 35?

A. No, sir, I couldn't get any water.

Q. Never mind about the reasons, give us the facts. When did you build your house on Section 26? A. In 1867.

Q. 1867 or 1868? A. 1867.

Q. What time in 1867?

A. I built the house that summer. I kept at it. I moved in the 1st day of October in 1867.

119 Q. In 1867? A. Yes, sir, in 1867.

Q. Then you were living on Section 26 when you went up to the Land Office?

A. In 1868 I was living on that quarter section.

Q. In 1867 when you went to the Land Office, were you not living on Section 26? A. I was not.

Q. In 1867 when you went to the Land Office you were not living on Section 26?

A. No, sir, not when I went first to the Land Office. I told you I came back and built a house on that quarter. I had no right to do so, of course.

Q. Don't argue the question; answer my questions. Let us understand each other please. You went to the Land Office in 1867 in July? A. Yes, sir.

Q. And you had then moved and were living on that land at that time? A. No, sir.

Q. Not on any of it? A. No, sir.

Q. When did you first, after that day, go on to this land for any purpose after July 1867, when did you locate on that land for any purpose?

A. I went right on the land after I came from the Land Office.

Q. What day was it when you went on the land?

A. I don't know. I didn't break on it right away.

Q. You didn't break on it right away?

A. No sir, I went up to the Land Office and came back. I think I didn't break on it, maybe after—I broke on it after the trial.

Q. After the trial? A. Yes, sir.

Q. Then you went to the Land Office you said in July 1867?

A. Yes, sir.

120 Q. And ordered a trial? A. Yes, sir.

Q. What else did you [—] besides ordering a trial, anything else? A. I don't understand you.

Q. Did you do anything else concerning the land, except to go there and order a trial on it in July 1867?

A. No, sir, that is all I done, ordered a trial on the land.

Q. Then you came back where?

A. I came back and commenced to improve it.

Q. Came back and commenced to improve it?

A. Yes sir, after the trial.

Q. After the trial? A. Yes, sir.

Q. When was the trial? A. The trial was in August.

Q. Then you did nothing on the land between the time you ordered the trial and the time the trial took place?

A. I wouldn't be positive as to that.

Q. You wouldn't say positively as to that?

A. No, sir, but to the best of my memory I didn't make any improvements on the land until that trial came off.

Q. Not until the trial came off? A. No, sir.

Q. The trial came off when?

A. In August I think the first week.

Q. Then in August you went on and commenced to build a house on this land, did you? A. Yes, sir.

Q. That was on Section 26? A. Yes, sir.

Q. You broke some? A. I broke six acres.

Q. How far from the line? The north line of 35 is the south line of 26? A. Yes sir.

Q. How far from the north line of Section 35 did you

121 build your house? A. From the north line of 35?

Q. Yes. A. I told you it was about fifteen rods.

Q. About fifteen rods? A. Yes, sir.

Q. Isn't it further than that?

A. I said twenty rods from the Section line of 26.

Q. You said twenty-five rods?

A. No, I said twenty. It might be twenty to twenty-five rods.

Q. Twenty to twenty-five rods from the north line of 35?

A. Yes, sir.

Q. How far south of your house did you commence to break?

A. It was right south of the house; I don't remember if I broke up to the line. I broke six acres south of the house, but I don't remember whether I broke up the line or not.

Q. You don't remember whether you broke to the south line of Section 26, or not? A. No, sir, not the first time.

Q. That is in 1867? A. No, sir.

Q. You do know you did break on Section 35 in 1867 did you? A. In 1867?

Q. Yes. A. No, I didn't break any in 1867 on 35.

Q. What did you do in 1867 on 35, if anything?

A. Cut hay.

Q. Then you cut some wild hay on it?

A. Yes, sir, cut some wild hay on it.

Q. What part of Section 35 did you cut wild hay on in 1867?

A. I cut on—what part of it?

Q. Yes, what part of it, what part of 35?

A. I cut on the west part of the eighty.

Q. You cut on the west part of the eighty? A. Yes, sir.

Q. The west part of the eighty? A. Yes sir.

122 Q. Did you know where the lines were?

A. Yes, sir, I did.

Q. That whole country was vacant, was it not?

A. It didn't make any difference?

Q. Answer the question. The whole country was vacant there was it not at that time? A. No, sir.

Q. How many settlers were there near your land at that time?

A. It was settled clear up. There was two settlers right outside of my land, yes, sir.

Q. Which way? A. They were west, there was none south.

Q. And there was none east?

A. Oh yes to the east it was occupied.

Q. But there were none south?

A. No, there was nothing south.

Q. You cut some hay on Section 35 in 1867? A. Yes, sir.

Q. That is all you did do? A. That is all I did do.

Q. You built your house on Section 26? A. Yes, sir.

Q. And broke six acres on 26? A. Yes, sir.

Q. And in 1867? A. Yes, sir.

Q. But you did nothing on Section 35?

A. I didn't break any.

Q. You say this trial was had at what time? A. In August.

Q. In August? A. Yes sir.

Q. Were you there at the time of the trial? A. Yes, sir.

Q. What were you doing there at the trial?

A. I was there with my witnesses.
Q. With your witnesses? A. Yes, sir.
Q. What else did you do there, anything else?
A. Yes, sir I did.
123 Q. What did you do?
A. After the trial was over with Mr. Bullis took my application for the land.
Q. After the trial was over with?
A. Yes, sir, after the witnesses proved that the land was vacant.
Q. Then Mr. Bullis took your application for the land?
A. Yes, sir.
Q. For what land? A. The quarter section.
Q. Which land was that?
A. The piece in 26 and the piece in 35.
Q. That was not a quarter section, was it?
A. Yes, sir, it was a quarter section, I call it so. I made my application for the east half of the northwest and the east half of the southwest.
Q. That would be two halves of a quarter section?
A. It was, yes.
Q. But it wouldn't be a quarter section?
A. That was what my application was for.
Q. What is that?
A. Well, anyhow, he took my application for a hundred and sixty acres all right.
Q. Who took your application? A. Bullis did.
Q. Bullis took your application? A. Yes, sir.
Q. Was that application printed or written?
A. I couldn't say what it was.
Q. You can't say whether it was printed or written?
A. No, sir.
Q. Can you swear anything about what you did when you made that affidavit?
A. I wouldn't say what I did. I know I signed it.
Q. What date was it that you signed it?
A. I couldn't tell you the date I signed it. I can tell you when I think it was. I think it must have been about the 6th or 8th of August.
124 Q. The 6th or eighth of August?
A. Yes, sir, as near as I can tell you. It was the first week in August, I think. It was certainly the month of August that the trial was.
Q. The trial was in August? A. Yes, sir.
Q. You are sure of that? A. Yes, sir.
Q. But as to the exact date you don't know?
A. No, sir, I couldn't tell you the date.
Q. What did you do with that application?

A. I didn't take it.
Q. What was done with it?
A. Mr. Bullis, I suppose kept it. It was his business. He was the only one doing business there.
Q. He was the only one doing business there?
A. Yes, sir.
Q. That is, the only officer you saw about it, was Mr. Bullis?
A. Yes, sir.
Q. The entry at that time had not been canceled, had it?
A. Yes, it had been canceled.
Q. It was not canceled at the time you made your application?
A. No, the land was not canceled then.
Q. The land was not canceled then? A. No, sir.
Q. So you knew you couldn't take it then?
A. I did. I knew I couldn't, because it wasn't canceled by the Government.
Q. Then you went right home after that? A. Yes, sir.
Q. That was in 1867, August 1867? A. Yes, sir.
Q. Where did you go to?
A. I went on and built the house.
Q. You built the house after that?
A. Yes, I built the house after that.
Q. You didn't build any house before that? A. No, sir.
Q. That was all that was done that year, 1867?
125 A. Yes, that was all. The house was built and six acres were broke.
Q. You got word, you said afterwards that the entry was canceled? A. Yes sir.
Q. You learned that Mr. Barkley's entry was canceled?
A. Yes, sir.
Q. Then you went to the Land Office again? A. Yes, sir.
Q. What time did you go there the next time?
A. The fifth of June.
Q. What time did you get word that the entry was canceled?
A. I repaired to Winnebago just as quick as I could after I got the letter from the office that the entry was canceled. I repaired there as well as I could. Of course, we had to go on foot or by team. Perhaps I didn't go there for two or three days, I think I went within two or three days.
Q. You think you went there within two or three days?
A. Yes, I went as quick as I could go, as quick as possible, to get the land.
Q. Then you made another application?
A. I wouldn't swear whether they used the old application, or whether they made a new application, whether the old one was used or not.

Q. Did you see the old one?
A. No, sir, I didn't see it when I went there the last time.
Q. You didn't see it at all? A. No, sir.
Q. You don't know whether they made a new application or not?
A. I couldn't say whether he did or not.
Q. Then after that you went home, did you, from the Land Office? A. Yes, sir.
Q. What did you do then?
A. I was breaking, I was still breaking on the land.
126 Q. After you went up there and put in your application for the land, in June 1868, what did you do when you went home?
A. In June '68 I went back and broke on Section 35, and cropped it with sod corn.
Q. That was in June? A. Yes, sir.
Q. Was that before or after you went to the Land Office?
A. I went to the Land Office the 5th of June.
Q. When did you commence to do your breaking on Section 35?
A. The breaking was done in the month of June, I done that breaking in June, and put in the corn.
Q. What time in June?
A. I don't know. It was in the month of June.
Q. Was it before the 5th?
A. I can't say it was before the 5th.
Q. Do you think it was after the 5th, or do you mean it was after the 5th?
A. It was in the month of June, it might have been the first and it might have been the 5th, I wouldn't swear.
Q. You don't think it was the 4th or 5th?
A. I couldn't solemnly swear.
Q. You say you made your application and went out there and broke?
A. I went out there and broke on section 35 in June, I know that.
Q. Was that before or after the entry was canceled?
A. I could not swear whether it was before or after.
Q. You can't recollect?
A. I don't remember whether I had broken before that.
Q. Isn't your memory a pretty good worker?
A. Yes, sir, but sometimes I forget things.
Q. What more after that did Mr. Bullis tell you?
A. In June?
127 Q. Yes. A. Generally my memory is pretty good.
Q. Well give us your memory about it, tell us about when you broke, whether it was before or after that?

A. I broke on it in the month of June, and planted corn on it, I know that.

Q. But you don't know whether it was before or after the 5th of June?

A. No, sir, I broke I know in the month of June. It was only a question of a few days. I can't tell whether I started breaking along about the first of the month or not.

Q. What part of Section 26 did you break on in June?

A. In June?

Q. Yes.

A. I didn't break any on 26 in June. I broke on 35 in June.

Q. You broke on 35 in June? A. Yes, sir.

Q. That was after you had been to the Land Office and you found you couldn't take the land on 35, that you went on to it and broke on it? A. Yes, sir, I broke on it.

Q. After you had ascertained you couldn't take that land on 35? A. Yes, sir.

Q. You ascertained that? A. Yes, sir.

Q. And yet you went and broke on it?

A. Yes, sir, I broke on it.

Q. He said you could only take that land in 26, but you went home and broke? A. Yes, sir.

Q. And you broke on 35? A. Yes, sir.

Q. Instead of 26? A. Yes, sir.

Q. There was nobody there to dispute you?

128 A. I don't see how they could, because it was Government land.

Q. It was Government land?

A. I don't see how any one could dispute my rights there.

Q. Nobody, in fact, was on the land at that time?

A. How could they be, it was abandoned by Barkley.

Q. That was in 1868? A. Yes, sir, 1868.

Q. What part of 35 did you break on in 1868?

A. I broke, I first started in to break right on the line.

Q. Right on the line? A. Yes, sir.

Q. What line? A. The line between 26 and 35.

Q. The north line of 35? A. Yes, sir.

Q. That would be the south line of 26? A. Yes, sir.

Q. You had broken the year before on to the south line of 26, or the north line of 35, had you not?

A. No, sir. I didn't break to the south line of 26 the first year.

Q. I thought you said you did?

A. No, sir. I know I remember the next year I broke up to the line of 35 and 26 and then I broke over the line.

Q. You kept right on breaking south? A. Yes, sir.

Q. And broke over the line of 26 and onto 35? A. Yes, sir.

Q. So it all went into one field? A. Yes, sir.

Q. So then you broke into 35? A. Yes, sir.
Q. How far south of the north line of 35 did you break? How many rods? A. I couldn't tell you that.
Q. Did you break a piece—
A. I broke a piece 50 rods long I should think.
Q. How far south of the line did you break, do you know?
A. I don't know, I couldn't say that. I never meas-
129 ured it. I broke eight acres along the north line.
Q. Was it two or three rods south of the line?
A. Yes, sir, ten rods south of the line, and over, but I never measured it.
Q. How long was the piece?
A. The piece I broke was 50 rods long.
Q. Fifty rods east and west? A. Yes, sir.
Q. And about ten rods north and south?
A. Yes, sir, it must have been that.
Q. Then you broke about ten rods over the line?
A. I broke eight acres. I don't know how far. It might have been I broke more than that over the line.
Q. Well, then you broke about ten rods south of the line?
A. I don't know, I never measured it.
Q. Then you are guessing, just guessing at it?
A. I won't guess at it at all, because I don't know and I am swearing to the truth. I know I broke eight acres in that piece.
Q. How many rods are there in an acre?
A. 160 rods I guess.
Q. Then can't you tell how many rods south you broke?
A. No, sir. I think any man of common sense can tell when he breaks about eight acres.
Q. Then you think you broke about ten rods south?
A. I couldn't tell you that.
Q. Did you break forty rods south?
A. I didn't, not then?
Q. Did you break 30 rods south?
A. No, sir, not in that year.
Q. Did you break twenty rods south? A. I might have.
Q. It might have been twenty rods south then, of the line?
A. I broke a piece fifty rods long, forty-five to fifty rods long, and in my judgment [and in my judgment] I broke
130 eight acres on Section 35.
Q. You broke some over the line? A. Yes, sir.
Q. But you don't know how much?
A. I broke eight acres.
Q. When did you break over the line?
A. Broke over the line?
Q. Yes. A. That was in 1868.

Q. In 1868 then you broke over the line? A. Yes, sir.
Q. What did you do in Section 35 besides that?
A. I fenced the lot that Barkley broke, fenced it with common posts and rails.
Q. How much?
A. There was on 35 about fifteen rods over the north line; I think about fifteen rods to my knowledge.
Q. About fifteen rods over the north line? A. Yes, sir.
Q. Did you connect your breaking with his breaking?
A. Not the first year.
Q. How much did he break?
A. As I said before, I thing it was not quite an acre.
Q. He had a piece broken?
A. He had a piece broke off the north line.
Q. That was in 1868? A. Yes, sir, that I fenced that.
Q. What did you fence it with?
A. I fenced it with common posts and rails, I split the rails out of the woods and nailed them on posts four feet high.
Q. The next year you broke some on 35, did you?
A. I don't think it was the next year, I think it was the following year, I think I broke seven acres. In 1868 I broke eight acres; In 1869 I didn't break any on that piece, and in 1870 I broke six or seven acres more.
131 Q. Then, you connected the eighty acres right beside it by another strip broken right along south?
A. Yes, sir.
Q. Is that all the breaking you did?
A. No, sir, I broke twenty acres in all.
Q. When did you break the other?
A. Well, it was along in 1874 and 1875 I broke the balance.
Q. In 1874 and 1875 you broke the balance?
A. Yes, sir. It might have been in the neighborhood of probably twenty acres of breaking in all, on the eighty, it might have been twenty-two, twenty acres more or less.
Q. You raised a crop on that, did you?
A. Yes, sir. Every year I ploughed and cultivated it and raised crops on it.
Q. And all this time when you didn't have any title to the land? A. I had no title to it, of course.
Q. Coming along later down than that, was there a time when you quit work there at all?
A. No, sir, I didn't quit it until Mr. Thompson bought it.
Q. After Mr. Thompson bought it? Whom did he buy it from, from the Railroad Company?
A. I think he bought it from Frederickson & Hanson.
Q. You understood it was through the Railroad Company?
A. Yes, sir, Frederickson was the main man.

Q. You understood he was selling it for the Railroad Company? A. Yes, sir.

Q. Did you offer to buy it yourself of Mr. Fredrickson?

A. He offered it to me.

Q. He offered it to you, did he? A. Yes, sir.

132 Q. You didn't buy it? A. No, sir.

Q. Mr. Thompson bought it?

A. Yes, sir, Mr. Thompson bought it.

Q. And he came there? A. Yes, sir.

Q. After he came there you quit occupying the land, did you?

A. Yes, sir, I had to, of course; we had a suit then.

Mr. Gilman: It seems that Boyeson had a contract and assigned it to Fredrickson, and Fredrickson assigned it to Thompson and Thompson assigned it to Erichsrud.

Q. You never had any house on this land on Section 35?

A. No, sir, one house is enough on a quarter; that is all the Government asks for, one house.

Bert Donovan, a witness of lawful age produced and sworn on the part of the Government, testifies as follows:

Examination-in-Chief

By Mr. Gilman:

Q. Are you a son of Mr. Michael Donovan, who has been testifying just now? A. Yes, sir.

Q. Do you recollect when your father moved into Minnesota?

A. Yes, sir, I have some recollection of it, yes, sir.

Q. Did you come with him? A. Yes, sir.

Q. How old were you at that time?

A. I must have been about eight years old seven or eight.

Q. Do you know when your father settled and built a house on this tract of land where he lived in Section 26?

A. Yes, I remember when we moved onto it, it was in the summer we moved on to it.

133 Q. Do you recollect what year that was?

A. It was 1867, I think; of course, I don't remember so much about the date, being young, but I remember when we moved there.

Q. Did you know of the line between these eighty acres, the tract on Section 26, the line between the eighty acre tract in Section 36, and the eighty acre tract in Section 35? Did you know that they joined, that the tracts joined?

A. Yes, sir, I know where they joined, where the road is.

Q. Is there a road between the two tracts? A. Yes, sir.

Q. On the south line?

A. Yes, sir, there is a road between the two tracts of land.

Q. Do you recollect your father cultivating, having any cultivation on that land in Section 35, in 1868? A. Yes.

Q. For each year right along?

A. Yes, sir. I helped to cultivate part of it for a number of years myself, and helped take care of the grain.

Q. Do you know how many acres he had under cultivation, in the tract on Section 35, say for the first few years that he lived there, how many acres under the plough?

A. Well sir, I don't know really; perhaps it was seven acres or eight acres, or maybe more. I remember there was quite a little breaking there, but I don't remember exactly how much it was. Of course, it grew somewhat as we did.

Q. Was there more or less of that land in the tract in Section 35 cultivated every year from 1868 up until 1875?

A. Yes, you we cultivated a little of it during that time.

Q. How was that which was not under cultivation, 131 used?

A. There was a pasture on some of it, and some of it we cut hay on, and some of it we used to feed cattle on.

Q. Was there any of it under fence? A. Yes, sir.

Q. How much was under fence, do you think?

A. Perhaps somewhere near fifteen acres, somewhere around that.

Q. What kind of a fence was it?

A. It was a hedged wire fence, posts and hedged wire.

Q. Did you live there and work with your father for a good many years? A. Yes, sir.

Q. How long?

A. I worked, I have been with him most of the time, in fact, since we came on the place, except a few years I spent in town. I always used to be there in the winter and a small part of the summer, taking care of the grain.

Q. You helped your father cultivate the land?

A. Yes, sir, I helped cultivate the land.

Q. You were not present at the time he made the application to enter it, I presume? A. No, sir, I was not, no.

Q. Nor were you present at the time I presume, when he made final proof of his occupation and cultivation of the 80 acre tract on Section 26 in 1875? A. No, sir, I was not.

Q. How long did your father continue in the occupation of that land before he was dispossessed? Do you recollect what year he was dispossessed?

A. It was the year 1885, I think; 1885; somewhere around that time.

Q. But until that time was he in possession, cultivation and occupancy of that eighty acres in Section 35, every year? 135 A. Yes, sir.

Q. A portion of it under the plough?

A. Yes, after we proved up on it.
Q. You never paid any taxes on 35?

Mr. Gilman: You never proved up on 35, so you never paid taxes on 35, did you. [—] I don't know whether father did or not I never paid any taxes on it myself.

Q. You used to herd cattle on it, you said.
A. Yes, sir, I have herded cattle there.
Q. There were cattle running round there and you used to herd them on it? A. Yes, sir.
Q. Mr. Donovan used to run a herd there? A. Yes, sir.
Q. And you would take care of the cattle and herd them all the country round?
A. I used to herd them myself.
Q. Your father what you called ran a herd there?
A. Yes, sir.
Q. For several years? A. Yes, sir.
137 Q. They ran on this eighty, as well as on any other vacant land there?
A. No, sir, we had our crops there. We didn't pasture that. We had to move and corral them out south further.
Q. But you herded them and the herd ran on this land, and on other vacant land there?
A. We cut hay on that though.
Q. What did you mean by saying you herded cattle on it?
A. That was further off. It was our own stock we herded on it.
Q. You just simply looked after your own stock on it?
A. Yes, sir.
Q. You didn't run a regular herd on it?
A. No sir, just our own stock.

George D. Moore, a witness of lawful age, produced and sworn on part of the Government, testifies as follows:

Examination in Chief

By Mr. Gilman:
Q. Where do you live? A. I live in Blue Earth City.
Q. How long have you lived here?
A. I came here in 1876, I think.
Q. Do you know Mr. Michael Donovan? A. I do.
Q. How long have you known him?
A. I have known him since June 1870.
Q. Since June 1870? A. Yes, sir.
Q. Where was he living then?
A. He was living on the same farm that he lives on at the present time.
Q. Is that the tract of land that he got under the homestead law on Section 26? A. Yes, sir.

Q. How far did you live from him when you first saw him?

138 A. I had the southeast quarter of Section 34, and the northwest quarter of the northwest quarter of Section 35, and I bought the forty acres of the Railroad Company in 35.

Q. You lived neighbor to him?

A. Yes, sir, I lived neighbor to him in 34.

Q. You knew where he lived, and what ground he was cultivating and occupying? A. Yes, sir.

Q. Was he, when you first knew him, cultivating and occupying any portion of the eighty acres in Section 35 that is in controversy?

A. Yes, sir, he had quite a field broken there in 35. We would see it in coming from my place to Blue Earth, I had to go right through his, that is along the road that went near the line between 26 and 35. He had quite a piece broke on 35. It was supposed to be in 35, on the south side in 35.

Q. How was that cropped, in what crops?

A. Oh, he had different crops in there.

Q. Different years? A. Yes, different years.

Q. Do you know whether he had any under fence?

A. Yes, sir, he had quite a patch fenced. I don't know how much there was under fence. He had fencing that he got from the timber. I can't say how much fence there was.

Q. Do you know how he occupied the balance that was not ploughed up under cultivation?

A. Well, most of the time he mowed it. As far as my recollection is concerned, he used to pasture the cattle south of the breaking, he used to pasture the cattle there.

139 Q. Was there a portion of that eighty acre tract of land that was better suited for grass and hay, cutting hay, than other portions of it?

A. Yes, sir, I should suppose there was about twenty acres, very nearly twenty acres, that was at the outlet of that little lake, was fixed better for cutting grass.

Q. Did he used to cut that for hay? A. Yes, sir.

Q. And the upper ground was used for pasture?

A. Yes, sir, the upper ground was used for pasture, which was not broken.

Q. That is, what was not broken, was used for pasture.

A. Yes, sir.

Q. How was the ploughed ground protected from cattle?

A. I think there was a herd law about there, and people had to look after their own cattle. But he had fences, he had some fence there, and every person had to look after their own cattle, so the children could herd the cattle away from the crops.

Q. Keep the cattle away from the crops?

A. Yes, sir, keep them away from the crops.

Q. How long did he continue in the occupation and cultivation of this eighty acre tract in Section 35, from time to time?

A. I came here in 1876, and after that time I had rented my farm and I didn't go up there very often. I was under the impression he had cultivated it until some time along in 1880, but I wouldn't say positively. I know whenever I was informed by him that Thompson had taken possession of it was some time in the eighties.

Q. Not in the year 1880?

A. No, sir, some time in the years eighty. I don't know what year in the eighties it was.

140 Q. As long as you lived up there, he occupied and cultivated this eighty in Section 35?

A. Yes, sir, he lived there and occupied and cultivated land on that Section.

Q. When you were out there, there appeared to be about the same cultivation and occupation there? A. Yes, sir.

Q. Until he was dispossessed by Thompson? A. Yes, sir.

No Cross Examination.

It is agreed and stipulated between the respective Counsel that the signatures to the depositions of Michael Donovan, Bert. Donovan and George D. Moore, are waved, and that the depositions shall have the same force and effect as if the signature of each deponent had been affixed thereto.

140A Government Exhibit "A".

State of Minesota,
Faribault County—ss.

Adams H. Bullis being first duly sworn says that he was Register of the Land Office at Winnebago City, Minn. during the year 1868; that on the 6th day of June A. D. 1868 Michael Donovan made application to this affiant at said Land Office as such Register to take and enter under the homestead act and as a homestead the E. ½ of the N. W. ¼ of Section 35 Town 101, Range 28 and the East ½ of S. W. ¼ of Section 26 Town 101 Range 28 subject to entry at such Land Office. That this affiant as such Register refused to allow said Donovan to take or enter under the homestead act the said E ½ of N. W. ¼ of said Section 35, but would only allow said Donovan to take and enter under said act E. ½ of S. W. ¼ of Section 26; and this was done under general instructions theretofore received from

the Commissioner of the General Land Office at Washington D. C.

A. H. BULLIS.

Subscribed and sworn to before me
February 10th, 1888.

[Notarial Seal] BENJAMIN G. REYNOLDS,
Notary Public, Minn.

Indorsed: Affi'd of A. H. Bullis Refusing to allow M. Donavan to enter under homestead act E. ½ N. W. ¼ S. 35, T. 101, R. 28. Minnesota.

140B Government Exhibit "AA".

State of Minnesota,
Faribault County—ss.

Michael Donovan being first duly sworn says that he is the Michael Donovan mentioned in the affidavit annexed of A. H. Bullis Register formerly of the Land Office at Winnebago City Minn. that at the time he made application to enter the E. ½ of N. W. ¼ of Sec. 35 Town 101, Range 28 in said County, as stated in affidavit of said Bullis he had taken possession of said land and upon the refusal of the Register to allow him to enter same as a homestead this affiant still held possession of said land and made improvements thereon and cultivated the same; that in the year 1868 after making such application and refusal to allow this deponent to enter same this affiant built a fence of posts and rails about four feet high around ½ acre of land broken on said E. ½ of N. W. ¼ and cropped said ½ acre and broke same year 7 acres and cropped the same in sod corn and broke thereon 7 acres more thereafter. That said last 7 acres was broken after 1870. That said other improvements remained on said land and were on said land on and before Nov. 29th, 1870. That after breaking said land this affiant planted and cropped said land year after year for 5 years and upwards. That in 1881 this deponent fenced about 15 acres of said land and used same for pasture, fence made of two wires and posts and the same is still on said land.

MICHAEL DONOVAN.

Subscribed and sworn to before me Feby 10, 1888.
[Notarial Seal] BENJAMIN G. REYNOLDS,
Notary Public.

140C State of Minnesota,
County of Faribault—ss.

Owen McLaughlin being first duly sworn says that he has heard read the above and foregoing affidavit of Michael Dono-

van and knows the contents thereof and that the same is true of his own knowledge.

OWEN McLAUGHLIN.

Subscribed and sworn to before me Feby. 10th, 1888.

[Notarial Seal] BENJAMIN G. REYNOLDS,
Notary Public.

(Indorsed)

Application of Michael Donovan for the institution of proceedings under act of March 3, 1887 to recover title to described land.

Forwarded to Secretary of the Interior Feby. 14, 1889 with adverse opinion. A. H. B.

Stamped with stamp of Department of the Interior. Received April 14, 1890 (?) (Very Illegible)

141 On the 30th day of October, A. D. 1901, pursuant to adjournments agreed to between respective counsel, the parties being present by their counsel, the further taking of testimony in this cause is proceeded with, in the presence of the Special Examiner at his office in the Federal Building, St. Paul, Minnesota, as follows:

Michael Donovan, is recalled on the part of the complainant, and testifies as follows:

Examined by Mr. Gilman:

Q. Since your former testimony in this suit, have you thought the matter over, so as to be able to state, whether it was in 1868 or 1869 that you first did the plowing on his tract of land which is in question? A. Yes, sir; in 1868.

Q. In 1868? A. Yes, sir.

Q. Did the road at that time, the public travelled road, wagon road, run on the section line, between sections 35 and 26?

A. Yes sir. The government stakes were up, the government corners were there.

Q. The land that you plowed up on this tract of land in question in section 35, lay on which side of the road?

A. On the south side of the road.

Q. So there is no question, as to what tract you were breaking on? A. No, question, sir.

142 Q. About how many acres did you say you broke up and put into sod corn in 1868? A. In 1868?

[A.] Yes. On this tract?

A. It was between 7 and 8 acres.

Q. Between 7 and 8 acres?

A. Yes, sir. As near as I can guess at it; as near as I can get to it; broke it in company—

Q. Did you afterwards, in subsequent years, break up more land, south of what you broke up in 1868?

A. In 1871 I broke twelve acres more on the place.

Q. Adjoining this that you broke up in 1868?

A. Yes, sir. It was, well, it was very near—I paid for twelve acres of breaking so I think that must have been it.

Q. You hired that broke? A. I hired that broke.

Q. Did you put it into a crop? A. Yes, sir.

Q. How much did you have broken up in 1875, altogether? I mean on this tract in question?

A. It was between eighteen and twenty acres.

Q. Between 18 and 20 acres? A. Yes, sir.

Q. Was that which you broke up put in crop every year?

A. Every year, yes, sir.

Q. In addition to that, I understood you to say, there was about half an acre south of that, that you had broken up on that tract which you had in cultivation, fenced as a garden spot? A. Yes, sir; it was, with posts and rails.

Q. That had been broken up by Barclay, before you located there? A. Yes, sir.

143 Q. But you continued cultivating that thereafter, as long as you remained there? A. Yes, sir.

Q. How much, did you say, you had fenced in on this land, for the purposes of a pasture? A. Fourteen acres.

Q. Altogether?

A. Altogether I had fourteen acres for pasture land, the crops I didn't have fenced. I had just a pasture for the cattle.

Q. And the balance of the land how was that used?

A. I cut hay on there.

Q. And you occupied, either as pasture, or for raising crops, or for cutting hay, the whole eighty acres? A. Yes, sir.

Q. Up until the time that you were dispossessed in 1885?

A. In 1885 yes, sir.

Q. Were there any buildings on that tract of land, the tract in section 35, that is in controversy?

A. Never. No buildings.

Cross-Examination

By Mr. Dunn:

Q. Was it a laid out road between section 35 and section 26—

A. I think it was between 35 and 26. We claimed a laid out road on the section lines.

Q. Wait a minute. I did not finish my question. A. Go on.

Q. Was it a laid out road between section 35 and section 26, between these two eighties in 1868? Was it a laid out road?

A. That is what we claimed. That is was a laid out road between them on the section line.

Q. I want an answer to my question. Will you answer my question?

A. I will answer your question just like this; it was
144 on the government section, if you will permit me to explain; we claimed—

Q. That was, I understand, what you claimed, but it was not, you say, a laid out road?

A. No sir; it was not a laid out road; it was—

Q. That is all I wanted.

A. We claimed it was on a government section.

Q. I don't care what you claimed. I want you to answer the question. You claim a good deal. Is it not a fact that when you testified to Mr. Gilman you said it was a road between these two sections; you mean to say it was on the section line, and that you considered it a road?

A. Yes, sir; on the section line, and we considered the section lines a road. When there is a road on a section line we considered that a road.

Q. That is your answer to the question? A. It is.

Q. Isn't it a fact, Mr. Donovan, that you built your house on Section 26? A. Yes, sir.

Q. About 20 rods from the line of section 35?

A. I think that is about it. I never measured it; I think about that. About that, I should think.

Q. About 20 rods from the line? A. Yes, sir.

Q. That is, the line between—

A. Between 26 and 35.

Q. Between 26 and 35? A. Yes, sir.

Q. This tract of land in section 35 is directly south of section 26, isn't it? A. Yes, sir.

Q. And your breaking that you did in 1868 was done
145 partly on section 26, and partly on section 35?

A. Yes, sir.

Q. And it adjoined, did it not?

A. The section lines joined.

Q. There was nothing but an imaginary line between them, they joined?

A. The section lines, the government lines?

Q. The breaking joined? A. Yes, sir.

Q. The breaking was one compact mass?

A. No; the road was between them. We supposed the road was on the section line.

Q. Did you leave a space of two rods or four rods for a road between these breakings?

A. Yes, sir. I don't know what it was we left. I don't know whether we left two rods or four rods; but we left a

strip there that we didn't break. I don't know whether we left two rods or four rods.

Q. You left a strip between the two breakings, did you?

A. Yes, sir; between the two breakings.

Q. Between the two pieces of breaking? A. Yes, sir.

Q. How did you find that out? When you testified before, you testified that it was all together. When did you find out that there was a strip between them?

A. I didn't testify to that before.

Q. I think you did. I think you testified that it was all together, that it was all adjoining?

A. It couldn't be all together, because the section corner was there; and we knew where the road should be. There must have been a strip, because we were not allowed to break the road. There must have been a strip between them.

Q. I don't care what there must have been. You
146 left a strip you [—] between the two pieces of breaking?

A. Yes, sir.

Q. How wide was the strip between the two pieces of breaking?

A. I don't know; two or three or four rods. I couldn't say how much it was.

Q. Who did the breaking?

A. I did myself, and Mr. John Carr.

Q. How much breaking did you have north of the line?

A. North of the line?

Q. Yes. A. I broke six acres in 1867 on section 26.

Q. How much did you have north of the line?

A. I will have to figure that out.

Q. In 1868?

A. I will have to figure it out. Eight and six—I had exactly north of the line; I had just exactly fifteen acres north of the line on section 26.

Q. Fifteen acres north of the line on section 26?

A. Yes, sir; and part of that I broke in 1867.

Q. I am talking about 1868?

A. No, no. I broke that in 1867 and 1868.

Q. In 1868, I am asking you about 1868. How many acres did you break north of the line in 1868? A. About nine acres.

Q. North of the line?

A. North of the line in section 26 in 1868.

Q. How much did you have broken north of the line in 1867?

A. In 1867, I had 9 from fifteen; between six and seven acres. There was fifteen acres exactly north of the road.

Q. Fifteen acres north of the road?

147 A. Yes, sir. Fifteen acres exactly north of the road, I broke in 1867 and 1868.

Q. You didn't break any on section 35 until 1868?
A. Not until 1868.
Q. You didn't build any house on section 35? A. No, sir.
Q. Barclay, you say, had a piece of breaking on section 35? A. Yes sir; on the east half.
Q. He had a piece broken on section 35, on this eighty?
A. Yes, sir.
Q. This disputed eighty?
A. Yes, sir; this disputed eighty.
Q. That was there when you went there. That breaking was done before you went there? A. Yes, sir.
Q. And before you ever saw the place?
A. Yes, sir. The breaking was there when I came out in 1867? When I came out there in 1867 the breaking was done.
Q. He built no house on the land?
A. The logs was there; whether he built a house or not, I don't know. The logs were there.
Q. There was no house built yet?
A. No sir. Part of the building was on the ground. There was the material there; there was the logs there. Part of the material was on the ground; the logs was on the ground.
Q. Where was that? On the disputed eighty?
A. Yes, sir; on the disputed eighty in section 35.
Q. You built your house on section 26?
A. Yes sir. I built my house on section 26.
Q. When did you build your house? A. In 1867.
148 Q. What month?
A. It was in the summer of 1867, some time in the summer; I couldn't tell you what month.
Q. About what month?
A. I came there in July, and I worked at cutting hay, and at building.
Q. No matter about cutting hay; when did you build the house?
A. I moved into the house the first of October; and then up to that time I was working at it, between cutting hay and building.
Q. Then it was some time in the summer of 1867?
Q. Yes, sir; some time in the summer of 1867.
Q. Can you say anywhere near what time is was?
A. I don't know exactly, because I hauled logs part of the time, and I cut hay part of the time.
Q. I don't want your reasons. Never mind about your reasons. Can you state anywhere near what time it was you built your house? A. It was in the summer of 1867.
Q. That you built your house? A. Yes, sir.
Q. What month did you do this breaking in on section 26 in 1867? A. What month?

Q. Yes.

A. We commenced the last week in May and we broke until very near the first of July.

Q. You broke on until the first of July. How many acres did you break in 1867, how many acres on section 26?

A. On section 26?

Q. Yes. A. In 1868?

Q. In 1867?

A. I only broke six acres, about six acres in 1867.

149 Q. I am speaking now about section 26, and you say you broke about six acres. You say you commenced breaking the last week in May, and broke from first to last about six acres by the first of July. A. Also on section 35.

Q. In 1867? A. Yes, sir, 1867. No, sir; 1867?

Q. Yes, I am confining myself to 1867.

A. Yes, sir. That is right.

Q. And in 1868 you commenced to break when?

A. We commenced,—I commenced—that testimony, I thought you referred to 1868. Is that testimony of 1867?

Q. I am now asking you about 1868.

A. I had 1868 in mind.

Q. I am asking you now about 1868.

A. No; I did not break on the first of July, 1867; I only came there the 4th of July. There is a mistake there.

Q. Well, we will, scratch that out, and see if we can get it right. We will commence over again.

A. I thought you meant 1868, I am a little bit deaf.

Q. We will confine ourselves to the year 1867; do you understand that? A. Yes, sir.

Q. In what month of the year 1867 did you commence to do breaking on this eighty in section 26? A. In July.

Q. How much did you break in July? A. Six acres.

Q. Did you do that breaking yourself, or did you hire it done?

A. I done it myself. I hired a man to drive the oxen; but I mean I did the plowing.

Q. Who was the man? A. John Donovan.

150 Q. How long did it take you to break that?

A. I don't know that. It is so long ago, it is pretty hard to tell. We only broke on an average, we averaged about an acre and a half a day; it was so wet.

Q. Then it took you about four days to break it?

A. I think it must have taken that long. It was very wet. We had a good deal of rain. It was a very wet year that year was; you know it was a wet year.

Q. No, I don't know anything about it. Now, that is what you did in 1867? A. Yes, sir, that is about it.

Q. Now, we will talk about 1868, and not 1867, you understand that? A. Yes, sir.

Q. In what month did you commence to break in the year 1868? A. The last week in May.

Q. Do you know how much you broke? How much did you break? First, I will ask you how long you broke. How long did you break?

A. We broke into the first week in July.

Q. How much did you break? A. On these two pieces.

Q. Yes. I will get at the both pieces. How much did you break altogether on the two pieces?

A. We broke altogether on the two pieces; we broke a little over fifteen acres.

Q. A little over fifteen acres?

A. Yes, sir; more or less.

Q. How much of that breaking was done on section 26?

A. It was very near eight acres.

Q. And how much on section 35?

151 A. Well, there was, take the two together, there was probably fifteen acres; probably a little less than that; that eight acres, it might be a little more than that; I think there was more than there was on the other. Now, I am merely guessing this, I never measured it. I am just guessing it.

Q. That is all right; how many acres were there? Was it seven or six or four acres. I don't expect you can tell exactly; only I want to know something about it. I am not expecting you to be accurate as to the exact amount.

A. Well, that is all right. That is as near as I can get at it.

Q. Now, with reference to the house that was on the land, in which direction was that breaking from the house? Was it east or west, or north, or south?

A. The breaking was south of the house, of course.

Q. All of it? A. And east. Southeast of the house.

Q. Was any of it north of the house?

A. The first of the six acres was a little north of the house; that is, the breaking in 1867; but not in 1868.

Q. But in 1868 all of the breaking was south of the house?

A. Yes, sir; in 1868 it was south of the house. Mind you, I said east and by south.

Q. It was not north of the house?

A. It was not north of the house. The house was within twenty rods of the west line of the eighty.

Q. It was all south? A. Yes, sir.

Q. None of it north? A. No, sir.

Q. You said you broke in company with somebody;

152 who was it you broke in company with?

A. John Carr.

Q. John Carr?

A. Yes, sir. He is here now. I don't know his middle name. We call him John Carr.

Q. When did you fence this pasture you say you fenced on that land?

A. I can't really swear to that. To the best of my judgment, it was in 1874. I fenced fourteen acres. Now, I am not really positive about it, Mr. Dunn, it was either 1874 or 1875. It was either 1874 or 1875, I fenced fourteen acres.

Q. With reference to the breaking, where was this fencing of the land in 1874 or 1875? In what direction was the pasture? A. The pasture, it was right west of the breaking.

Q. The pasture was west of the breaking on section 35?

A. Yes, sir; west of the breaking, on section 35.

Q. Now, in 1871, you said you broke some more?

A. Yes, sir.

Q. Where did you break that?

A. I broke that south of this tract.

Q. South of the fence?

A. No; not south of the fence. The fence was, about, I should judge, about 30 rods from the east line; and I broke right east of that fence.

Mr. Gilman: Was that south of what you broke in 1868?

Witness: It was south of what I broke in 1868. Yes, sir, It was south of what I broke there in 1868.

Mr. Gilman: And adjoining the tract that you broke in 1868?

Witness: Yes, sir. Joining the tract I broke in 1868.

Q. You say you allowed your cattle to run on the other part of it, did you?

A. I herded my cattle on the other part of the land:
153 the land was all vacant. It was used just for hay and pasture.

Q. It is a fact, isn't it, that that whole country was pretty near all vacant at that time? A. Yes, it was.

Q. There were very few neighbors at that time? A Yes, sir.

Q. Very few people round there, were there not?

A. Yes, sir; but part of the time my cattle were herded on that piece of land at home.

Q. At home?

A. Yes, sir. They would go for miles. We would fence them in at home part of the time, and take care of them.

Q. How many neighbors did you have, and how near were they to you in 1868, and from on until 1871?

A. Mr. Welden lived on the southeast of section 26; and Mr. McLaughlin cornered on the southwest of section 26-101-28.

Q. Who was the first man?

A. Mr. Weldon; he is here now.

Q. Mr. Weldon?

A. Yes, sir he was a resident; he was on the southeast quarter of section 26.

Q. Who else?

A. Mr. McLaughlin, he was on the west; he was on section 34, it cornered on section 26; and his land cornered on section 26.

Q. With the exception of these you have named, how many other neighbors were there in that neighborhood?

A. Some two or three. Mr. Caswell was on the north of me.

Q. Who else?

A. Mr. Demeree; he was on the northeast quarter of section 35 and lived there then. He came there before I did. He was there when I came there in 1867.

154 Q. There were not many neighbors in that country?

A. It was all settled in there in the north, but not in the south.

Q. In 1868, how was that?

A. In 1868, yes, and up to 1868; in 1867 when I came there neighbors were there north of me; but south of me it was vacant.

Q. There was a good deal of government land, wild land and railroad land?

A. There was railroad land; there was not much government land. There was railroad land.

Q. And some State land?

A. There was some State land; but very few pieces. There was no government land in there where I would be. There was a quarter, I think some two and a half miles north of me; but the fact [it], it was all occupied at that time. Most of the government land I saw at that time was occupied, at that time.

Q. Most of the government land was occupied?

A. Yes, sir.

Q. But there was railroad land, railroad land was there not?

A. I don't know. There was some railroad land they called it; but I didn't call it railroad land. I don't know whether you would call it railroad land.

Q. It was what you would call vacant?

A. I don't know whether you would call it railroad land; because it was outside of the railroad limits. I don't know

what land it was. It was outside of the railroad limits, I was informed at that time.

155 Redirect Examination

By Mr. Gilman:

Q. Was there any travel on that road in 1868, between sections 35 and 26?

A. There was not much travel; there was once in a while some travel; there was some travel on the road. They would travel along it in every shape. There was no fence there, and they would go over it in every shape, the nearest way they could go. Some would go on the section line, and some would not.

Q. Was there travel enough to make a path, so you could see where the road was?

A. There was wheel tracks, but not very much travel. The government corners were there, and you could see the wheel tracks. There was not much travel on that road.

Peter L. Welden, a witness of lawful age, produced and sworn on the part of the complainant, testifies as follows:

Examination-in-Chief

By Mr. Gilman:

Q. Where were you living in 1867 and 1868, Mr. Welden?

A. I was living in the town of Pilot Grove.

Q. In what county? A. Faribault County.

Q. In this State? A. Yes, sir.

Q. Had you taken up a claim there on government land?

A. Yes, sir; I had.

156 Q. What time did you locate there, what year?

A. I located there in the year 1866.

Q. In 1866? A. Yes, sir.

Q. How far was your place from the land that Mr. Donovan was located upon. A. It joined him.

Q. Joined him, in which direction?

A. He joined me on the west.

Q. Do you know when Mr. Donovan located there, located on the east half of the Southwest quarter of section 26?

A. He came there in 1867.

Q. He came there in 1867?

A. Yes, sir, and built; and moved on in 1868.

Q. Did you know him right along from the time he located there, all the time from the time he located there?

A. Yes, sir.

Q. Did you know of his plowing or breaking up, and putting a crop on the land in Section 35 which joined section 26?

A. Yes, sir.

Q. What year did he first do plowing on that tract of land, the east half of the northwest quarter of section 35, what year?

[Q.] I wouldn't positively say. I think it was in 1868. I wouldn't be positive as to that.

Q. Do you know about how much he broke up on that tract in 1868?

A. I should think it was four or five acres, or more.

Q. Do you recollect whether he put a crop of sod corn on it, on that year, or not, a crop of sod corn?

A. He put in some sod corn.

157 Q. Do you know of his subsequently breaking up more on that tract in section 35, adjoining what he broke up in 1868? A. Yes, sir I do.

Q. Do you know about how much he broke up altogether in this tract on section 35? A. No; I do not.

Q. Do you know whether he put in a crop every year on this breaking this land that he broke up, on this tract in section 35, right along, until the time he was dispossessed, away along in 1885? A. Yes, sir.

Q. Did you ever notice a piece of land, half an acre or so, that he had under fence and cultivation for garden purposes, which was south of what he had plowed up and put into crop, on that tract in section 35?

A. Yes, sir. The first year he put it into a garden.

Q. How is that?

A. The first year he put in some garden there.

Q. Did he use that for cultivation every year?

A. Yes, sir; put it in as a garden.

Q. Did he use it for garden stuff after that, if you know? How did he use it?

A. Yes, sir; he did one year for garden stuff, that I know of.

Q. Was it fenced in?

A. No, sir; not the plowed ground. It was not fenced.

Q. No, but I mean, this garden spot. A. No, sir.

Q. Did you know of his having some of the ground fenced for a pasture? A. Yes, sir.

158 Q. Do you know about how much he had fenced there? A. No, sir; I do not.

Q. Do you know of his cutting hay on this ground every year, right along? A. Yes, sir.

Q. Was that eighty acre tract in section 35 used and occupied and cultivated by him every year, as a part of his farm, in connection with the tract in section 26? A. Yes, sir.

Q. And was it occupied and cultivated every year until he was put out of possession? Do you recollect when he was put out of possession by Thompson? A. No; I do not.

Q. Was it so occupied and cultivated by him until he was put out of possession? A. Yes, sir

Q. Were you living on that tract that was adjoining him all this time? A. I was, part of the time.

Q. Part of the time? A. Yes, sir.
Q. Are you living on it now A. No, sir.
Q. How long did you live there?
A. I lived there about seven or eight years, somewhere along there seven or eight years.
Q. How long? A. Seven or eight years.
Q. From what year did you live there seven or eight years?
A. 1866. It may have been a little longer than that. I think it is about that time.
Q. Where did you move to then?
A. I moved over to Elmore.
Q. How far from this Donovan tract?
A. It is about three miles.
Q. After you moved there did you still live on the farm?
A. Yes, sir.
159 Q. After you moved away from this tract that adjoined him, were you back and forth, so as to see the Donovan place, and what he had under cultivation?
A. Yes, sir. I used to go back and forth to Chain Lake.
Q. You knew of his living on and cultivating these two tracts, right along? A. Yes, sir.
Q. You did? A. Yes, sir.

Cross Examination.

By Mr. Dunn:
Q. Where do you live now, Mr. Welden?
A. I live in Elmore, town of Elmore.
Q. How far from Mr. Donovan?
A. Well, it is about three miles, I should think.
Q. Mr. Donovan, you say, came into that neighborhood in 1867. A. Yes, sir.
Q. When did you first see him there?
A. That was in 1866, March, 1866.
Q. You first saw him there in 1866?
A. No; I thought you asked me when I came there.
Q. No. When did you first see Mr. Donovan there?
A. 1867.
Q. What month was it, do you remember?
A. I don't know. I don't remember now. It was along in the fall late, late in the fall.
Q. The fall of 1867? A. Yes, sir.
Q. Late in the fall, you first saw Donovan there?
A. Yes, sir.
Q. Where did you see him?
A. I saw him on his place, to work.
160 Q. He was on the place where he lives now, at that time? A. Yes, sir.
Q. What section is his house on? A. Section 26.

Q. Your farm adjoined his, did it? A. Yes, sir.
Q. Which way? A. On the east.
Q. What section is your farm on? A. Section 35.
Q. Were you on the same quarter section that this land in dispute is on, the same quarter section?
A. No; I was mistaken about it; I was on section 26.
Q. You were on section 26?
A. I think it was section 26.
[—] Then your farm did not adjoin this farm on section 35? A. It cornered it a little.
Q. It didn't join it? A. No, sir.
Q. When did he build his house, on that place there?
A. That was in 1867; he finished it in 1868.
Q. You say he finished it in 1868? A. Yes, sir.
Q. Are you sure about that; that he commenced his house in 1867? A. Yes, sir.
Q. You are positive, are you, about that? A. Yes, sir.
Q. Did you know that the land he lived in on section 35 was claimed to be railroad land, when he lived there on it?
A. No, sir.
Q. When did you first learn that?
A. I learned that about the time that Thompson was on it.
Q. You didn't know it was railroad land?
A. No, sir. I thought it was a homestead all the while.
Q. Up to 1885 you thought it was a homestead?
161 A. Yes, sir.
Q. For twenty years you thought it was a homestead. It is twenty years from 1865 to 1885; you thought it was a homestead all that time?
A. I didn't think much about it, until they had a lawsuit over it.
Q. You didn't know anything about it until then?
A. No, sir.
Q. How did you know the land that Mr. Donovan claimed?
A. Because—
Q. Don't you know he only got a patent some time in the seventies for the land in section 26? It was not on the assessment roll, didn't you know that?
A. No, sir. I did not.
Q. Didn't you know that his land was in dispute, that the south eighty was in dispute?
A. I didn't know anything about it until the suit. I didn't know anything about it.
Q. Didn't you know it was in dispute, before Thompson came there in 1885?
A. No, sir. I didn't know anything about it, until Thompson came there; when I saw they had a fuss over it. I didn't

know anything about the land. He claimed to own it, and I supposed he owned it.

Q. You supposed he owned it? A. Yes, sir.

Q. You testified to Mr. Gilman that Mr. Donovan put a crop in that land every year until he was evicted. Do you know anything about his being evicted, being put out of possession? A. Yes, sir.

Q. Did you know anything about his being put out of possession? A. I heard he was.

162 Q. You heard he was? A. Yes, sir; at that time.

Q. Whom did you hear put him out of possession?

A. I just merely heard talk about it; that is, when Mr. Thompson was there.

Q. You heard that Mr. Thompson won the lawsuit?

A. Yes, sir. That is all.

Q. That is all? A. Yes, sir.

Q. You say up to the time you heard about Donovan's lawsuit, he cropped that piece of land up to that time?

A. A short time before that.

Q. Some time before that? A. Yes, sir.

Q. Some years before that?

A. Before Thompson and he had the lawsuit; some time before that. I can't say how long it was.

John Carr, a witness of lawful age, produced and sworn on the part of the plaintiff, testifies as follows:

Examination in Chief

By Mr. Gilman:

Q. Mr. Carr, did you know Michael Donovan in 1867 and 1868? A. Yes, sir.

Q. Did you know the tract of land on which he settled, in Pilot Grove, in 1867 or 1868? Do you know the tract of land on which he settled? A. Yes, sir.

Q. What year do you know that he settled there?

162½ A. On this tract of land?

Q. Yes. The tract of land that he lived on thereafter, and lives on at the present time?

A. I have no recollection of the year he settled on it.

Q. Where were you living at the time you first knew of his being there and having settled there?

A. I was living on section 15, Pilot Grove.

Q. How far was that from his place?

A. Well, it is a mile or a mile and a half. It was just exactly two miles.

Q. Two miles?

A. Yes, sir; that is, from our land to his, to a corner of his.

Q. You lived with your father at that time, did you?

A. Yes, sir.

Q. He had taken up a claim on which he was then living?
A. My father, do you mean?
Q. Yes. A. Yes, sir.
Q. Did you and Mr. Donovan do plowing together, in 1868?
A. Yes, sir.
Q. On whose land did you plow?
A. We plowed on Mr. Donovan's land. It was supposed to be Mr. Donovan's land.
Q. And what other land? A. And my father's land.
Q. You didn't plow for any one else? A. No, sir.
Q. You plowed together, did you?
A. Yes, sir. Plowed together.
Q. In what year did you first plow for Mr. Donovan?
A. In 1868.
Q. Did you do plowing in 1868, on the east half of the Northwest quarter of section 35, for him that year?
163 A. That is, this disputed land?
Q. Yes; this disputed land? A. Yes, sir.
Q. Did you know where the section line was between section 35 and section 26? A. Yes, sir.
Q. How much in the year 1868, how many acres, according to your recollection, did you plow for Mr. Donovan, on the south side of the section line, on this tract that is in dispute?
A. That I couldn't say, to a certainty.
Q. Of course, you can't say to a certainty; but about how many acres?
A. There was from five to ten acres, somewhere. Somewhere from five to ten acres.
Q. Do you recollect how many days you were to work there, plowing with him then?
A. No, sir, I couldn't tell you that.
Q. Do you know or recollect whether he put a crop of sod corn, or any other crop, on that, in 1868?
A. I couldn't say as to that.
Q. You couldn't say as to that? A. No, sir.
Q. Do you know of his having plowed more on that tract south, and adjoining what you broke up for him on that tract, in 1868, and subsequent years?
A I know of his having more land in cultivation, after that.
Q. You didn't help to plow it though?
A. No, sir. I didn't help to plow it.
Q. Do you know about how many acres he had under cultivation altogether? A. Altogether, I couldn't say, no sir.
Q. On this tract, in section 35?
164 A. I don't know how many acres, no, sir.
Q. But you know he had plowed up more, and had more under cultivation than what you helped him to plow in 1868? A. Yes, sir.

Q. Do you recollect anything about there being half an acre south of that he had under cultivation, at the north end of this tract in section 35, on which he raised garden stuff?

A. I have no recollection about it.

Q. You have no recollection about it? A. No, sir.

Q. Do you recollect of his having any of this land on section 35, that he claims, fenced in for the purpose of pasture?

A. That year, yes.

Q. Do you recollect that he had some fenced?

A. At any time?

Q. Yes. A. No, sir; I don't.

Q. You never saw any fence that he had on the land?

A. I have no recollection of it.

Q. You have no recollection of it? A. No, sir.

Q. Do you know whether he cut hay on that land?

A. He did.

Q. Did he cut hay every year?

A. Well I couldn't say. I couldn't answer that question, because the country was large at that time. I presume he cut hay wherever he had a mind to.

Q. How long did you live on this place where your father was, right along, how many years? A. With my father?

Q. Yes.

A. Somewhere in the neighborhood of fifteen years. I was fourteen years old when I came there, and I stayed there until I was thirty-three; about fourteen or fifteen years.

Q. During that time you frequently saw Mr. Dono-
165 van, and were acquainted with what he was doing, particularly in connection with his location? A. Yes, sir.

Q. Was he every year cultivating more of that land in section 35, that is, the land in dispute? A. Yes, sir.

Q. Did he have it under the plow? A. Yes, sir.

Q. What was that used for, was it cropped, or was it used for pasture, or for cutting hay?

A. It was used for pasture, or for cutting hay.

Q. Do you know anything about a drain through a part of this tract? A. Of this disputed tract?

Q. Yes. A. Yes, sir.

Q. To drain the surface water off, is that? A. Yes, sir.

Q. Do you know who kept that drain open, and who has kept it open up to the present time?

A. I know of keeping it open; I know it is kept open up to the present time. I don't know who is doing it.

Q. If you don't know about that, it doesn't matter?

A. I don't know who is doing it. I know Mr. Donovan has done some; but whether he has done it lately, I don't know.

Cross-Examination

By Mr. Dunn:

Q. You assisted in breaking this land on section 35, you say, did you? A. Yes, sir.

Q. In 1868? A. Yes, sir.

Q. You were a boy about fourteen years old, you said, then? A. Yes, sir.

Q. You broke on your father's place? A. Yes, sir.

166 Q. And then broke some with Mr. Donovan?

A. No. Just give me time; it is a long time ago. I want to think about it. I was more than fourteen years old.

Q. I thought you said you were fourteen years old?

A. I came here when I was thirteen.

Q. It is immaterial. You were a boy?

A. Yes, sir. I was a boy of fourteen or fifteen.

Q. You did break with Mr. Donovan? A. Yes, sir.

Q. Where, and on what section did you break in 1868, for Mr. Donovan? A. In 1868?

Q. Yes.

A. Well, I broke on two sections. We broke on section 26 and section 35.

Q. On sections 26 and 35?

A. Yes, sir. We broke on the eighty that he lives on, and on this disputed eighty.

Q. Where did you commence to break?

A. We commenced on section 26.

Q. On section 26? A. Yes, sir.

Q. Did you break with the furrows running east and west, or north and south? A. East and west.

Q. East and west? A. Yes, sir.

Q. Did you see the road there at that time?

A. I couldn't say.

Q. What is that? A. I couldn't say.

Q. Did you leave out any strip for a road between these two breakings? A. I couldn't say as to that.

Q. What is that? A. I couldn't say as to that.

167 Q. What is your best memory upon that?

A. With regard to the road, do you mean?

Q. Yes. Whether there was a road there at that time.

A. Well, now, there was a road.

Q. Where did it go on that land, and which way?

A. It went round a slough.

Q. Went round a slough? A. Yes, sir.

Q. There is a slough right there on that land?

A. Yes, sir. There is a slough right there, but not on the land where we were breaking.

Q. Was there pains taken by you and Mr. Donovan to leave out a road between these two breakings; or did your two breakings come together? A. I don't know as to that.

Q. You don't know as to that? A. No, sir.

Q. Your memory does not serve you as to that? A. No, sir.

Q. How do you know that you were on section 35 at all?

A. How do I know?

Q. Yes.

A. The only way I can answer that question, and testify to it, is, I know we broke over a knoll there was there, pretty near to the top of a knoll that is across this line.

Q. Across this line?

A. Yes, sir. Where the line is now.

Q. You know where the line is now? A. Yes, sir.

Q. How near to that line did you break?

A. How near to the line?

Q. Yes.

A. If my memory serves me right, as I recollect it, we broke right on to the line there.

Q. Did you break the line up?

A. No, sir; I don't know as to that.

168 Q. You said you broke right on the line. What do you mean by that? What do you mean to be understood by saying that you broke right on the line?

A. In those early days we were not looking for section lines.

Q. I understand it. Recollect I was there. I know all about it. The fact is, you broke that land the same as any other land; you paid no attention to the line?

A. I don't know whether we broke on the line or not.

Q. Now, how do you know you broke on section 35?

A. I know the line we broke. I know the land, and I know where the line is now. I was on section 35; I didn't know it as section 35 at that time.

Q. Then you didn't know anything about the section lines at that time? A. Yes, sir; I did.

Q. You didn't know whether it was on section 35 or section 45?

A. No, sir. I didn't know whether it was on section 35 or section 45.

Q. And you didn't know but what you were on section 26?

A. I didn't know but what I was on section 26.

Q. You didn't undertake to make any distinction between section 35 and section 26, did you, when you broke?

A. No, sir.

Q. You broke it all solid together?

A. I couldn't tell you. I couldn't tell you as to that. I don't know exactly whether we left a strip there, or whether

the whole breaking joined, as we went south. We commenced north, and broke south.

169 Q. You commenced north, and broke south?

A. Yes, sir.

Q. And you can't swear now exactly, whether you left a strip, or not, can you? A. No, sir.

Q. You don't think you did, do you?

A. No. I don't think we did.

Q. When did you first know of any buildings being built on section 35? A. I never knew of it.

Q. Are there not any buildings there now? A. No, sir.

Q. There are not? A. No, sir.

Q. No buildings on section 35? A. No, sir.

Mr. Gilman: No; there is no building on section 35.

Mr. Dunn: Yes, there are. Erichsrud had a house there on section 35.

Witness: No, sir.

Q. He didn't build that house there? A. No, sir.

Q. Never built a house there. A. No, sir.

Q. Well, perhaps not. Perhaps that is right. Have you known of more being broken, more land being broken there?

A. After I helped Mr. Donovan to break?

Q. Yes. A. Yes, sir.

Q. How much. A. I don't know.

Q Altogether, how much have you known to be broken up?

A. I couldn't say.

Q. How many acres. A. I don't know.

Q. Isn't it pretty nearly all of it broken up?

A. No, sir; it is not all broken up.

170 Q. All that is breakable is broken up? A. No, sir.

Q. Do you know who broke it up?

A. No, sir; I don't.

Q. Did Mr. Thompson break any land there?

A. I think so.

Q. Did Mr. Erichsrud break any land there?

A. I don't know. I don't think so.

Q. You don't think he did? A. No, sir.

Q. The buildings that Mr. Erichsrud built are on the adjoining eighty?

A. I have no recollection of Mr. Erichsrud building any buildings at all.

Q. Did Mr. Thompson build any buildings at all?

A. There was a shack, or a house there; I don't know whether he built it, or whether it was on there when he got it.

Mr. Gilman: On this land in dispute?

Witness: No, sir. Not on this land in dispute. It may be Thomas Demeree's place.

Mr. Dunn: I guess that is right. There are no houses on that particular eighty.

Witness: No, sir.

Harry Schilling, a witness sworn on the part of the complainant, testifies as follows:

Examination in Chief

By Mr. Gilman:

Q. Did you at one time move onto a tract of land in
171 Pilot grove, Faribault County, Minnesota. A. Myself?

Q. Yes, or did your father's family, or whoever was there?

A. My father did. I was with him part of the time.

Q. What year? A. In the fall of 1871.

Q. How far did you locate from the land on which Mr. Donovan was living?

A. I think it was about a mile and a half.

Q. Had you known Mr. Donovan prior to finding him there?

A. I had seen him in the summer a few times. I knew him by sight, that is about all.

Q. After you moved there you became acquainted with him, and knew his place?

A. Yes, sir. I knew him better afterwards.

Q. Do you know of his having under cultivation, after you became acquainted with him, this land in section 35; that is, the east half of the northwest quarter of section 35?

A. Well, I knew there was a little cultivation there; yes, sir.

Q. On the south side of the road?

A. Yes; south of where the road is now.

Q. South of where the road is now? A. Yes, sir.

Q. You know where the road is now?

A. Yes, sir. I know where the road is now.

Q. Did you know of his having had under cultivation land south of where the road is now? A. Yes, sir.

Q. In 1871?

A. Yes, sir. That is, I don't know whether he had any. I knew there was land under cultivation, that I supposed to be Donovan's.

Q. Do you know about how many acres there were under cultivation, where the road is now? A. No.

172 Q. How many years were you acquainted with Mr. Donovan, and with what he was doing in connection with his place there, after you moved there in 1871?

A. I know he lived there since. I was gone a year or two, or three years at different times, away from there; he was always there when I got back.

Q. He was always living there when you were back again?

A. Yes, sir.

Q. Do you know of his having under cultivation portions of land on the south side of what is now the road, the traveled road, on section 35? A. Yes.

Q. Did he have it cultivated every year?

A. I couldn't tell.

Q. Whenever you were there? A. Whenever I was there.

Q. You have noticed that? A. Yes, sir.

Q. Were you back and forth there? A. Yes, sir.

Mr. Dunn: When do you mean? When were you back and forth there?

Witness: I knew afterwards that Mr. Donovan was cultivating it.

Mr. Dunn: I thought you said you didn't know him at that time.

Witness: I knew afterwards that Mr. Donovan was cultivating it.

Mr. Dunn: You are referring to a time subsequent to that now, are you?

Witness: Yes, sir.

173 Q. Generally speaking, as soon as you knew that Donovan was cultivating it, you knew of his having put in a crop there, every year, right along, did you not?

A. Yes, sir; I did.

Q. Whenever you were round there?

A. Yes, sir. Whenever I was round there.

Q. Can you give an estimate of the number of acres that he had under cultivation, south of where the road is now, on this tract in section 35?

A. I could guess at it. That is as near as I could tell.

Q. Give a guess at it.

A. It may have been somewhere in the neighborhood of five acres, and probably more.

Q. Do you mean in 1871?

A. No. In 1871, I don't recollect he ever had broken anything, except a little tract. He seemed to have a post and rail fence there, a kind of a snail fence, whatever was on it. That is all I recollect in 1871 he ever broke there.

Q. When do you recollect of seeing any acres under cultivation there first?

Mr. Dunn: The five acres?

Mr. Gilman: Aside from this little piece that you spoke of.

A. Well, it would be very hard for me to tell just when that would be.

Q. Do you know of his having any of the land under fence, for the purposes of pasture? Did you ever see any
174 fence on the land?

A. Yes, sir. I have seen a fence on that land, a post and wire fence.

Q. Do you know about how many acres were fenced in?

A. No. I couldn't say how many acres.

Q. Do you know of Mr. Donovan cutting hay on that land?

A. No, I do not.

Q. Were you at home most of the time for several years, or were you off and away?

A. No. I was not at home, only once in a while. I was to home a great deal. There was a few years I think I was to home.

Q. When you were at home, was Mr. Donovan in the occupation and cultivation of that tract of land on section 35, the tract in dispute? A. I couldn't tell you about that.

Q. But you know of his having had some plowed up on the land?

A. Yes, sir; later on, after 1871, later on, two or three or four years, I knew that Donovan was working the land across the road there.

Cross-Examination

By Mr. Dunn:

Q. You say you came there in 1871? A. Yes, sir.

Q. When you came there, you say you don't know anything about his [his] working on that land across the road from this place. A. Not a great deal.

Q. Was there any indication of his working on that land south of the road, when you came there in 1871?

A. Well, I couldn't say about that.

Q. How did it look, as to the number of acres that
175 were broke there, was there much broke there south of the road in 1871?

A. I will tell you. South of the road in 1871, I knew there was some broke at that time; but I don't know, and I couldn't tell you how much it was. I didn't know in 1871 that Mr. Donovan was working that land.

Q. You didn't know in 1871 that Donovan was working that land? A. No, sir.

Mr. Gilman: But it was being worked by somebody?

Witness: It was being worked by somebody, south of his house.

Q. South of the house, or south of the road?

A. South of the house, and south of the road.

Q. Was there any road there then? A. I don't know.

Q. Put your thinking cap on, and think whether there was any road, and whether the breaking didn't go right straight south, without any break, or anything for a road, until after 1871? A. I don't know as to that.

Q. After 1871, there began to be a road there?

A. I don't know. The road might have been there years before.

Q. I mean the traveled road; I don't mean, a laid out road?

A. At that time; I don't know.

Q. How old were you in 1871? A. Nine years old.

Q. You were not old enough to know very much about it?

A. No, sir. I didn't pay very much attention to it.

Q. I understand. You couldn't pay much attention to it; that is true. But along afterwards, you noticed that he had four or five acres broken, south of that road?

176

A. That, or more; I couldn't say.

Q. You say you had seen some fencing on the land; you don't know who put that fencing there?

A. No, sir. I didn't see the man that put the fencing there.

Q. Do you know whether this land is not pretty near all broken up now, the eighty acres south of the road?

A. It is pretty near all broke up.

Q. Do you know who broke it up? A. No, sir; I don't.

Q. You are not living in that neighborhood now?

A. I live on section 34 now.

Q. Do you know whether Thompson broke it up?

A. No, sir. I do not.

Redirect Examination

By Mr. Gilman:

Q. In after years, you knew, and you know now, where the road runs between section 35 and section 26, do you not?

A. Yes sir. I know now where that road runs.

Q. In looking back you know that there was land broken, in 1871, when you first noticed it, south of where that road is now? A. Why, sure, yes sir.

Q. But how many acres you don't know?

A. No, sir. I do not.

Q. Or how much was afterwards broken?

A. No, sir. I do not.

177 United States Circuit Court, District of Minnesota, Third Division.

United States of America, Complainant,

v.

Chicago Milwaukee & St. Paul Railway Company; Southern Minnesota Railway Company, Thomas Thompson; O. C. Erichsrud, et als., Defendants.

Stipulated Facts.

For the purpose of the trial of the above entitled action, the following facts are stipulated, subject to any objections thereto as irrelevant and immaterial, and subject to the right of introducing other testimony relating thereto, and to the establishment of other facts:

178 I.

That the Act of Congress approved July 4, 1868, referred to in the Bill and in the Answer, made a grant of lands to the State of Minnesota to aid in the construction of a railroad, which Act is hereby referred to for the particulars thereof.

II.

That the Southern Minnesota Railroad Company was a corporation organized under the laws of Minnesota, with power and authority to construct such line of railroad as was existing at the date of said Act of Congress, and that the Legislature of Minnesota on the 25th day of February, 1867, transferred said land grant to said railroad company, subject to the provisions of said Act of Congress, and to the provisions of said legislative act, which legislative act is also hereby referred to for the particulars thereof.

III.

That the tract of land in dispute, to wit, the East Half ($E\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Thirty-five (35), Town One Hundred One North (101), Range Twenty-eight (28), in Fairbault County, Minnesota, is within the indemnity limits of said land grant for said railroad, as determined by its Definite Location, which became effective February 25th, 1867, under the legislative act aforesaid; and that the amount of 179 lands realized from the Congressional grant aforesaid was much more than eighty (80) acres less than the amount of a full grant as defined by the Congressional Act aforesaid.

IV.

That before the passage of said Act of Congress, to wit, June 21, 1866, one Luman Barclay, a person duly qualified to acquire lands under the Homestead law of the United States, duly made entry as a homestead of said tract above described in Section Thirty five (35), together with an adjoining tract in Section Twenty six (26), viz., The East Half (E½) of the Southwest Quarter (SW¼), of the same town and range, which entry remained in full force and operation until January 14, 1868, when the same was duly cancelled by the Land Department at Washington, on account of its abandonment by Barclay.

V.

That on the Sixth day of June, 1868, the defendant Michael Donovan, a person duly qualified to acquire land under the homestead laws of the United States, duly entered as a homestead the said East Half (E½) of the Southwest Quarter (SW¼), Section Twenty six (26), Town One Hundred One North, (101), Range Twenty eight (28) West, and thereafter, to wit, on the 18th day of May, 1875, duly made final proof of his occupancy and improvements of said tract of land in said Section Twenty six (26), in compliance with the homestead laws, and
180 duly received the usual certificate thereof and a Patent for said land, dated July 1st, 1875.

VI.

That on the 29th day of November, 1870, and not before, the said Southern Minnesota Railroad Company selected said tract of land in said Section thirty five (35), in lieu of land lost in the granted limits under said Act of Congress; which said tract of land was certified to the State of Minnesota by the Land Department, March 25th, 1871, for the benefit of said Railroad Company; and on the 8th day of August, 1871, the State of Minnesota conveyed by deed said tract of land to the said Railroad Company.

VII.

That the said Southern Minnesota Railroad Company, in March, 1868, made a certain mortgage or trust deed to Albon P. Mann and S. R. Ruggles as trustees, to secure the payment of an issue of its bonds, upon its railroad appurtenances and all other property including said land grant, and all lands acquired or to be acquired thereunder; which said mortgage was duly foreclosed by said Trustees in the United States Circuit Court of Minnesota by suit commenced in 1872, in which suit a Final Decree was rendered by said Court, in May, 1874, ordering a

sale of said mortgaged property, in pursuance of which Decree a sale of said mortgaged property was duly made by a Master in Chancery of said Court in February, 1877, to A. P. Mann and H. H. Cammann in trust for the bondholders secured by said mortgage, and thereafter, on the 3rd day of March, 1877,

181 the said purchasers under the laws of the State of Minnesota, duly organized as a new corporation by the name of the Southern Minnesota Railway Company, and conveyed to said Railway Company all of said property so purchased at said foreclosure sale.

VIII.

That on the 26th day of June, 1883, the said defendant Michael Donovan, duly applied at the proper Local Land Office to, enter as an adjoining farm homestead the said tract of land in said Section Thirty five (35), which application was rejected upon the ground that the land so appiled for had been certified to the State of Minnesota for the said Southern Minnesota Railroad Company, from which refusal the said Donovan duly appealed to the Commissioner of the General Land Office, where said matter is still pending and undetermined.

IX.

That on the 5th day of January, 1885 the said Southern Minnesota Railway Company, by contract in writing, agreed to sell said tract of land in question in said Section Thirty five (35), to one A. Boysen, for the sum of $480.00, $94.87 being paid down, the balance to be paid in yearly installments of $80.00, which said contract is attached to the Answer of said Railway Companies as Exhibit "A," and is found on page 46.

182 That the said Boyesen, on the 6th day of January, 1885 duly assigned said contract to one N. C. Fredericksen, which assignment is attached to said answer and found on page 54;

That the said Fredericksen on the first day of April, 1885, duly assigned said contract to the defendant Thomas Thompson, which assignment is attached to said answer and found on page 52.

That the said Thompson, on the 3rd day of February, 1888, assigned said contract to the defendant O. C. Erichsrud, which assignment is attached to said answer, and found on page 50.

That the said Erichsrud paid the balance due upon said contract and received a warranty deed for said land from said Southern Minnesota Railway Company, on the 20th day of March, 1888.

X.

That on February 14, 1889, the Commissioner of the General Land Office addressed a communication to the Secretary of the Interior relating to the application of said Donovan for the institution of proceedings under the Act of Congress of March 3, 1887, which communication is hereto attached and marked Exhibit "B" hereof.

XI.

That on April 1st, 1889, the Secretary of the Interior addressed a communication to the Commissioner of the General Land Office in relation to said application of said Dono-
183 van, and in reply to the letter of said Commissioner of February 14th, 1889, which communication of the said Secretary is hereto attached and made a part hereof, marked Exhibit "C."

XII.

That on April 12th, 1890, the Commissioner of the General Land Office addressed a letter to the Secretary of the Interior, informing him that a demand for the reconveyance of said land had been made as directed by him, which letters is hereto attached and made a part hereof, and marked Exhibit "D."

XII.

That on April 16, 1890, the Secretary of the Interior addressed a letter to the Attorney General, relating to said matter, which letter, or a copy thereof, is hereto attached and Marked Exhibit "E," and made a part hereof.

XIV.

That in 1885, the defendant Donovan commenced an action against the defendant Thompson, in the District Court of Faribault county, Minnesota, alleging that said Thompson had wrongfully and unlawfully taken possession of the tract of land involved in this suit, and excluded him, said Donovan, therefrom, and demanding judgment for damages against him on account of said wrongful acts, and to be reinstated in the pos-
session of said land; that such proceedings were had in
184 said action, that on March 24, 1887, said Court decided that the said Donovan had no title to said land, nor right to the possession of the same, and that the said Thompson had a right to the possession of the same under the said Boysen contract, which had been assigned to and was held by the said Thompson for the purchase of said land, and judgment was accordingly ordered and entered in said court against the said Donovan in said action on the 4th day of Jan-

uary, 1888, which judgment was never vacated, modified, reversed or appealed from.

XV.

That since the commencement of this action, the said O. C. Erichsrud has departed this life intestate, leaving surviving him his widow, Anna Erichsrud, and Addie J. Erichsrud, Mabelle H. Anderson, nee Erichsrud, Julia P. Remington nee Erichsrud, his children and only heirs at law, all of whom on the 24th day of May, 1899, joined in a warranty deed conveying said tract of land involved in this suit to one Louis K. Woodwick, and that the said widow and children of the said O. C. Erichsrud and the said Woodwick have by Supplemental Bill been made defendants in this action, and have appeared and answered therein.

Dated, October 30, 1901.

185 J. M. GILMAN.
Special Counsel for Plaintiff,
BURTON HANSEN and W. H. NORRIS,
Solicitors for Railway Companies, Defendant.
ANDREW C. DUNN,
Solicitors for Defendants,
Anna Erichsrud,
Addie J. Erichsrud,
Mabel H. Andersen, nee Erichsrud,
Julia P. Remington, nee Erichsrud,
Louis K. Woodwick.

B. W. J. D. Department of the Interior. L. L. M.

F. General Land Office.
Washington, D. C. May 14, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed paper dated February 14, 1889, addressed to the Hon. Secretary of the Interior, is a true and literal exemplification of the original of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal United States General Land Office]

BINGER HERMANN,
Commissioner of the
General Land Office.

186 GOVERNMENT EXHIBIT "B."

F. Department of the Interior.
General Land Office.

Address only the Commissioner of the
General Land Office.

Washington, D. C., Feby. 14, 1889.

Hon. Secretary of the Interior,
Washington, D. C.

Sir: I have the honor to transmit herewith for your consideration the papers relating to the application of Michael Donovan for the institution of proceedings under the Act of March 3, 1887, (24 Stat., 556), to restore to the United States title to the E½ NW¼ Sec. 35, Town 101 N., Range 28 W. 5th p. m., in the Worthington land district, Minnesota, with report and opinion as follows:

The land is in the 20-mile (indemnity) limits of the Southern Minnesota Railway Extension grant of July 4, 1866, (14 Stat., 87.) The withdrawal of lands on account of the grant along that portion of road opposite the tract described was ordered by office letter of August 23, received at the district land office Sept. 10, 1866.

The official records show that Luman Barkley made homestead entry No. 4347, June 21, 1866, for E½ SW¼ Sec. 26, and E½ NW¼ Sec. 35, which was canceled Jany. 14, 1866.

187 On June 6, 1868, Michael Donovan, (the petitioner) made homestead entry No. 5297 for the East Half (E½) Southwest Quarter (SW¼) Sec. 26, upon which final certificate No. 3568 was issued May 18, 1875, followed by Patent July 1, 1875.

The tract in odd section was selected on account of the grant, and certified to the State of Minnesota for the benefit of the Railway Company March 25, 1871.

Donovan's petition was filed in this office by Hon. John Lind April 20, 1888, and by letter of July 9, 1888, the attorney representing the railway company in this city was notified of the same and allowed thirty days within which to show cause why the prayer of the petitioner should not be granted. The company's response was filed December 6, 1888, and although not presented within the time prescribed, it is forwarded herewith.

The basis of Donovan's petition is his own alleged settlement upon, and occupancy and improvement of the land prior to and at the dates of selection and certification of the same on account of the railway grant, and the exceptance of the same

from the operation of the withdrawal by the subsistence at that date of Barkley's entry.

There can be no question that the land was excepted from the withdrawal. Upon the cancellation of Barkley's entry the tract became subject to selection on account of the grant or to the entry under the preemption or homestead laws by the first legal applicant.

188 Donovan alleges, and his statement is corroborated by the then register of the local land office, that at the time of making his homestead entry described above he applied for all of the land formerly covered by Barkley's entry, but eliminated from his application the tract in odd section upon being informed that it was railroad land, and made the entry as described above. He also alleges that he had improvements upon and was occupying the land prior to 1870, and has continued in occupancy of the portion improved ever since.

I am of the opinion that the petitioner waived his claim to the tract in odd section by eliminating the same from his homestead application and making entry for the land in section 26; that when he made the entry No. 5297 he exhausted his right of entry under the homestead law, and that he was not in a position to assert a legal claim to the land in section 35 when it was selected and certified on account of the grant.

No claim for the land appeared upon the official records when it was selected and certified for railroad purposes, and if all of Donovan's allegations respecting occupancy and improvement of the land at those times be admitted I cannot see how such acts could operate to defeat the grantee's right of selection as they were mere acts of trespass without color of legal right.

I am therefore of the opinion that the land was not erroneously certified on account of the grant; that the facts alleged by Donovan are not sufficient to warrant the institution
189 of proceedings to restore the title, and that the prayer of the petitioner should be denied.

The attorney for the railway company, Mr. Lind and Donovan will be informed respecting this action.

Very respectfully,

S. M. STOCKSLAGER,
Commissioner.

Indorsed: Department of The Interior. L. & R. R. Div. 3537. Received April 14, 189..

Department of the Interior,
General Land Office,
Feby. 14, 1889.

Commissioner forwards to Secretary of the Interior papers relating to petition of Michael Donovan for proceedings under Act of March 3, 1887, for restoration of title to the E. ½ N. W. ¼ Sec. 35, Town. 101 N. range, 28 W. 5th P. M. Minnesota.

4
21666. Com'r to Secty.
Feby 14, 1889.
B.

C. 7-6515. S. S. M.
F.
E. I. S.

Department of the Interior.
General Land Office.
Washington, D. C., March 14, 1901.

I, Binger Hermann, Commissioner of the General Land Office do hereby certify that the annexed copy of a letter from the Secretary of the Interior to the Commissioner of the General Land Office, dated April 1, 1889, is a true and literal exemplification of the original letter on file in the office.

In Testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

[Seal U. S. General Land Office.

BINGER HERMANN,
Commissioner of the General Land Office.

GOVERNMENT EXHIBIT "C."

Exd.
H. D. L.
M. M. C.

Department of the Interior,
1296—'89. Washington,
April 1, 1889.

In re Application of Michael Donovan for institution of proceedings under Act of March 3, 1887.

The Commissioner of the
General Land Office Sr.

Sir: I have before me the report of your office of the 14th Feby., adverse to the application of Michael Donovan, for the institution of proceedings under the act of March 3, 1887 (24 Stat., 556), to restore to the United States title to the E. ½ of the N. W. ¼ of Sec. 35, T. 101 N., R. 28, Fifth P. M., Worthington, Minnesota, and asking to be reinstated to his right to make homestead entry of said tract.

This tract is within the twenty miles indemnity limit
191 of the Southern Minnesota Railway Company. The withdrawal of lands on account of the grant was made September 10, 1866, and at said date the tract in controversy, together with the E. ½ of the S. W. ¼ of Sec. 26 was embraced in the homestead entry of one Lyman Barkley, which was canceled January 14, 1868.

The tract in dispute was excepted from the withdrawal for the benefit of said grant by reason of the entry of Barkley, and after the cancellation of his entry the tract became subject to selection by the road, or to entry under the homestead and preemption laws by the first legal applicant.

On June 6, 1868, Michael Donovan, the petitioner, presented his application to the local land office to make homestead entry of all the land embraced in the former entry of Barkley, and was informed by the local officers that he would be allowed to enter the eighty acres in the even section, but would not be allowed to enter the eighty acres in section 35, as the same was railroad land and not subject to entry. Whereupon, he made entry of the E. ½ of the S. W. ¼ of Sec. 26, upon which final certificate issued May 18, 1875, and which was patented to him July 1, 1875.

Subsequently to the application of Donovan, to make entry of said tract, to-wit, the E. ½ of the N. W. ¼ of Sec 35, the railroad company selected said tract on account of the grant, and it was certified to the State for the benefit of the railroad company March 25, 1871.

Upon the filing of Donovan's petition, the railroad
192 company was called upon to show cause, within thirty days, why said petition should not be granted, and in response thereto the company on December 16, 1888, filed its answer objecting to the granting of said petition upon the following grounds:

"1st. The Act of March 3, 1879, does not in any sense apply to indemnity lands, and an additional homestead entry under said Act is not permissible.

2nd. Donovan when he made H. E. 5797, for 80 acres in Section 26, exhausted his homestead right, and therefore he has no right to the land herein involved which requires the protection referred to in the Rule."

It can not be questioned that at the date of Donovan's application to make entry of said tract it was open public land, subject to entry under the preemption or homestead laws by

the first legal applicant; that Donovan was the first legal applicant after the cancellation of the homestead entry of Barkley, and that his application was improperly rejected. But you denied the petition, upon the ground that Donovan waived his claim to the tract in the odd section by eliminating the same from his homestead application after its rejection, and perfecting entry for the land in Sec. 26, and that when he perfected said entry he exhausted his right under the homestead law, and was not in a position to assert a legal claim to the land in Sec. 35 after it was selected and certified on account of the grant. It is upon this ground, mainly, that the railroad company, also, defends. But, in addition thereto, the
193 company has filed a certified copy of the record of the district court of the Sixth Judicial District of Minnesota, in the case of Michael Donovan v. Thomas S. Thompson, involving the right of possession to the land in question, for the purpose of showing that by judicial process the grantee of the railroad company has been declared to be in legal possession of said land.

The third section of the act of March 3, 1887, provides:

"That if, in the adjustment of said grants, it shall appear that the homestead or preemption entry of any bona fide settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: Provided, that he has not located another claim or made an entry in lieu of the one so erroneously canceled: And provided also, that he did not voluntarily abandon said orig- entry: And Provided further, That if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed land shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to bona fide settlers residing thereon."

194 It was undoubtedly the intention of the act to protect the bona fide settler in all his rights as against the railroad company, and, therefore, the object and purpose of section three, above quoted, was not only to correct all decisions made by the Department or the General Land Office, erroneously canceling the homestead or preemption entry of any bona fide settler to lands within railroad grants, whether said lands had been certified to the company or not, but, also, to reinstate the settler in all his rights to lands upon which he may have settled, and for which his application to file or enter may have been rejected by the local office, provided it be

shown that said application to file or enter was erroneously rejected, and that the settler had not located another claim or made entry in lieu of the land for which his application to file or enter had been so erroneously rejected.

In such case, the Department is reinvested with jurisdiction to reinstate the settler in all his rights, and to allow him to perfect his entry or filing by complying with the public land laws, if application to be reinstated in such rights be made within a reasonable time.

While it is true that as between the government and the settler, he acquired no vested right upon the mere application to enter, yet he had an inchoate right as against every one else, and if it appears that the land was subject to entry at the date of his application and such application has been erroneously rejected, his right to the land under this section is made
195 superior to that of a bona fide purchaser for value from the railroad company.

In this case, it appears from the record that, although Donovan's application was rejected, he nevertheless, upon the refusal of the register to allow him to enter the same as a homestead, still remained in possession of said land, and made improvements there, by fencing and cultivating the same: That in 1881 he had fenced about fifteen acres of said land, used the same for pasture, and is still in possession of said land.

These facts are not denied by the company in answer to the rule, and said facts are substantially set forth in the decree of the court in the case of Donovan V. Thompson, above referred to, although the court held that Donovan is not an actual settler on the land, and has not constantly, occupied the same, or caused the same to be occupied, since the year 1868, and that he is not entitled to the possession of the same and has no claim, right or interest in the same; that the Southern Minnesota Railway Company is the legal owner of said land, and the defendant (Thompson) is the equitable owner of the same, and is entitled to the possession of the tract.

This decision is not such an adjudication of the rights of the parties as will prevent the Department from taking jurisdiction of the case under the third section of the act of March 3, 1887, and the only question remaining is, whether Donovan has exhausted his homestead right and waived all right to the land within the odd section by perfecting homestead
196 entry and receiving patent for the land in section 26.

It is insisted by the company that Donovan would have no right to make an additional entry except under the

act of March 3, 1879, which applies to even sections only, and within granted limits, and that as the land in controversy is within the indemnity limits, he was not restricted to eighty acres at the time of making his homestead entry, and can not therefore, make an additional entry under the act of March 3, 1879.

In my opinion his rights will not depend upon said act of March 3, 1879, but upon his right under the act of March 3, 1887, to be reinstated to all the rights under his application to enter the same under the homestead law, which was erroneously rejected, and the mere fact that he made entry of part of the land embraced in his application, will not bar him of the right to be reinstated in the same manner as if the entry had been made and was subsequently erroneously cancelled.

It is not the making of an additional or a second homestead, but an application to be restored to his original homestead right.

This question seems to have been settled by the decision of the Department in the case of Holmes v. Northern Pacific Railroad Company (5 L. D., 333).

In that case Holmes made entry for a tract of eighty acres in section 24, together with a tract of eighty acres in section 13, being adjoining land. The entry, so far as it covered the land in the odd section, was canceled by the decision of
197 the Department, being in conflict with a railroad grant, and Holmes perfected entry to the eighty acres in the odd section, and received patent therefor. Subsequently, Holmes applied to amend his entry so as to embrace the land in section 13, being part of the tract covered by his original entry, and which was canceled as before stated, claiming that said tract was excepted from the grant to the railroad company by the homested entry of one Miller that existed at the date of withdrawal, and which was canceled after withdrawal and prior to Holme's entry.

Your office held, that under existing rulings, the entry should have been allowed, but as Holmes's right to the tract in controversy was fully considered and adjudicated under the rulings in force at the date of the cancellation, it could not now be reopened. The Department, however, held that although the case as then presented, between the railroad company and Holmes, was res adjudicata, yet that as it appeared at the date of the application to amend the company was not entitled to the land, having been excepted therefrom by the entry of Miller, under the rulings of the Department then in force, there was no reason why the case should not be considered as one solely between Holmes and the government, and

that he should be allowed to amend his entry so as to embrace all the land originally covered by it. It was, therefore, held that no other rights having intervened, and the question being one solely between Holmes and the government, he was entitled to such favorable action as would secure to him
198 the benefits of his original entry and the improvements made thereon. It was accordingly directed that his original entry should be reinstated, and that patent should issue to him for the entire one hundred and sixty acres, upon surrendering the patent that had been issued for the eighty acres, it appearing that his final proof covered the entire one hundred and sixty acres.

But independently of this, the act of Congress of March 2, 1889, allows an additional homestead entry for such a quantity of land as with the land already entered shall not exceed one hundred and sixty acres, in all cases where a person has heretofore made entry and final proof for a less quantity than one hundred and sixty acres.

Considering that it was the purpose of the act of March 3, 1887, to protect all bona fide settlers in their rights to lands covered by their settlements and improvements, whether the application to enter or file had been rejected, or, having been allowed was afterwards erroneously canceled, or for any part thereof, by the officers of the Land Department, and where the application was rejected or erroneously canceled as to part of any entry made, such settler would be entitled to perfect his entry to the entire tract originally applied for, notwithstanding the issuance of patent for part of the land, I am of opinion that this case should be reinstated, and that Donovan should be allowed to perfect his entry of the remaining portion of the land covered by his original application in
199 accordance with the fifth section of the act of March 2, 1889.

This class of cases seems to be provided for by that part of the circular to registers and receivers, of February 13, 1889, which is as follows:

"While the act contains no provision relative to persons whose entries or filings have not been canceled, but whose lands have been certified or patented on account of railroad grants, it follows, as a matter of course, that their rights should be protected, and the mode of procedure in such cases will be the same as in the cases where cancellation has been made, except that the parties should apply to make final proof and payment, instead of for reinstatement of entry; but in such case proceedings will be deferred until the title has been restored to the United States as provided by section two of

the act. The instructions of Nov. 22, 1887, under this section, are hereby modified in accordance with the foregoing."

The decision of your office is reversed, and you are hereby directed to make demand upon the Chicago, Milwaukee & St. Paul R. R. Company for reconveyance of said land, and if the company refuse to reconvey you will return the papers to the Department to be submitted to the Attorney General for the purpose of instituting proceedings against the company to have said certification canceled as provided for by the 2d section of the act of March 3, 1887.

Further action on the application of Donovan will be suspended until said land has been reconveyed, or until the
200 final determination of the question by the Court—in the event the company shall refuse to reconvey said land.

Herewith are returned the papers in the case.

Very respectfully,
JOHN W. NOBLE, Secretary.

Indorsed: E—1666. (Stamp of Dept. of Interior so indistinct that it cannot be read.)

3537. Department of Interior, April 1, 1889.

Secretary overrules Commissioner's recommendation in case of Michael Donovan and directs that a demand be made upon the C. M. & St. P. Ry. Co., for reconveyance of E½ NW¼ 35-101 N-28-W.

5
Secty to Comr.
Apr. 1-89.
C.

D. 7—6515 S. S. M.
F. Department of the Interior.
E. I. S. General Land Office.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter from the Commissioner of the General Land Office to the Secretary of the Interior, dated April 12, 1890, is a true and literal exemplification of the record of said letter in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal U. S. General Land Office] BINGER HERMANN,
Commissioner of the General Land Office.

201 GOVERNMENT EXHIBIT "D."

"F" Department of the Interior, C. H. B.
General Land Office. W. C. E.

Washington, D. C.,
April 12, 1890.

Hon. Secretary of the Interior,
Washington, D. C.

Sir: Pursuant to the direction given in your decision of April 1, 1889, in the matter of Michael Donovan's application for reinstatement of his homestead entry right, and for the institution of proceedings under the act of March 3, 1887, to recover title to the E½ NW¼ Sec. 25, Town 101, N. range 28 W. 5th p. m., Minnesota, this office, by letter dated April 9th, 1889, and addressed to H. G. Haugan Land Commissioner of the Chicago, Milwaukee & St. Paul Railway Company, made formal demand for the reconveyance of title to the land described to the United States. The time prescribed by statute (90) days was mentioned in said letter as the period within which compliance should be made, under pain of institution of proceedings for recovery as provided by law in the event of failure. More than one year has elapsed since the date of mailing said demand, and no response has been made, nor to my knowledge has action of any kind been taken in the matter by the railway company. The papers relating to said matter, marked and numbered as indicated schedule below, are transmitted for your consideration, and such action as may seem proper, viz.:

202 1. Donovan's Application.

2. Copy of Commissioner's letter of July 9, 1888, laying Rule to show cause upon railroad company.

3. Company's response to Rule of July 9, 1888, supported by abstract of court proceedings in case of Donovan vs. Thompson.

4. Commissioner's letter of Feby. 14, 1889, forwarding papers to Secretary of the Interior, with recommendation adverse to granting petitioner's prayer.

5. Secretary's decision dated April 1, 1889, overruling Commissioner's recommendation, and directing that demand be made upon the company for reconveyance of the land.

6. Commissioner's letter of April 9, 1889, demanding reconveyance of the land to the United States.

Any copies or exemplifications of records of papers on file in this office, necessary to the prosecution of proceedings in this matter will be promptly furnished upon request.

Respectfully, LEWIS A. GROFF,
Commissioner.

Indorsed: Letter to Comr. to Secty. Apr. 12-90.

203 GOVERNMENT EXHIBIT "E."

3539-1890. L. R. S. E. F. B.

Department of the Interior,
Washington. April 16, 1890.

To the Attorney General.

Sir: I have the honor to transmit herewith a communication from the Commissioner of the General Land Office, of the 12th instant, and the papers therein referred to, relative to the application of Michael Donovan, for the institution of proceedings under the act of March 3, 1887, (24 Stat., 556) to restore to the United States title to the E½ of Nw W¼ of Sec. 35, T. 101 N., R. 28 W., 5th p. m., Worthington, Minnesota.

From the papers herewith enclosed, it will be seen that this application was passed upon by this Department, and on April 1, 1889, I decided that the tract in question was not subject to selection by the Southern Minnesota Railway Company, and was therefore improperly certified for the benefit of said road, and that Donovan under said act was entitled to be reinstated in his right to make homestead entry of said land, which had been erroneously rejected, I therefore directed that the railway company be called upon to reconvey said land, and upon failure or refusal to reconvey that the papers be re-

204 [—] for the purpose of instituting proceedings against the company to have said certification canceled, as provided by the second section of the act of March 3, 1887.

A rule was served upon the company, in accordance with the directions contained in said decision, and no response has been made thereto within the time limited in said rule.

Said papers are therefore transmitted for your consideration with the request that suit may be instituted to have said certification canceled, if in your opinion said suit can be maintained.

The reasons for holding that said land was improperly certified to said company are fully set forth in the decision of this Department, made April 1, 1889,—a copy of which is herewith transmitted. Any other information or papers in the possession of this Department, relative to said matter, which may be required, will be furnished upon application.

Very respectfully,
JOHN W. NOBLE,
Secretary.

Indorsed. E. Secty. to Atty. Genl. Apr. 16, 90.

Indorsed. Stipulation of Facts. Filed November 2d, 1901. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

Complainant rests.

205 On the 12th day of December, 1901, the parties met pursuant to adjournment, being represented by their respective solicitors, at the City of Blue Earth, County of Faribault, State of Minnesota, at 11 a. m. of said day, in accordance with the agreement of the respective solicitors setting said place and time for the further taking of testimony in the cause and the special examiner being present the following proceedings are had.

Frederick P. Brown, a witness of lawful age, produced and sworn on the part of the defendants represented by Mr. Dunn, & Mr. Norris testifies as follows:

Examination-in-Chief

By Mr. Dunn:

Q. Where do you reside? A. Blue Earth.

Q. How long have you resided here? A. Since 1866.

Q. What was your business in 1885, 1886, 1887 and 1888?

A. I was in 1867 and 1868—

Q. No, 1886? A. I was Register of Deeds.

Q. You were Register of Deeds of this county?

A. Yes, sir.

Q. Did you know in his lifetime one O. C. Erichsrud?

A. Yes, sir.

Q. Do you know at what time he departed this life, about what time?

A. I couldn't say exactly the date, but I think it must be twelve or thirteen years ago.

Mrs. Erichsrud: Thirteen years ago this Spring. March I think it was.

Mr. Dunn: March, 1887?

206 Mrs. Erichsrud: March, 1888, I think it was.

Q. March, 1888, she thinks it was?

A. I don't know, I think that is about it.

Q. You were appointed as administrator of his estate?

A. Yes, sir.

Q. I think that was in 1888?

A I don't recollect the date exactly.

Q. Did you qualify and act as such administrator?

A. Yes, sir.

Q. Did you have charge of any real estate that Mr. Erichsrud had in this County, as administrator?

A. Yes, sir; we had, that is Mr. Hagan done most of that business.

Q. But you know the fact?

A. I know the fact, yes, sir.

Q. Do you know the eighty acres of land that is involved in this law suit, the East half of the Northwest quarter of Section 35 Township 101, Range 28? A. Yes, sir.

Q. Township of Pilot Grove? A. Yes, sir.

Q. You had charge of that eighty acres belonging to the estate of Mr. Erichsrud? A. Yes, sir.

Q. During your period of administration? A. Yes, sir.

Q. Was the farm rented to anybody during your administration?

A. Well, now I wouldn't say about that. Mr. Hagan can tell you about that, because he took charge of that matter.

Q. You don't know?

A. No, I wouldn't be positive, because he had charge of that matter, and it was so long ago.

Q. Was there a crop received from that land?

A. I think so, that is I am not positive but I think so.

Q. After your closing up of your matters as administrator, did you have anything further to do with this land? A. Yes, sir, I did.

207

Q. What did you have to do? A. I sold it.

Q. You sold it? A. Yes, sir.

Q. For whom? A. For the heirs of O. C. Erichsrud.

Q. Who were they?

A. Mrs. Erichsrud, his wife, and the children Ada, Julia and Mabel.

Q. To whom did you make the sale?

A. Louis K. Woodwick.

Q. One of the defendants in this action?

A. I believe he is.

Q. That is to say, you acted as his agent?

A. I wouldn't say I acted as his agent, Mrs. Erichsrud asked me to sell it.

Q. You acted as their agent in selling it to Mr. Woodwick?

A. Yes, sir, I did.

Q. Did the money he paid for the land pass through your hands? A. Yes, sir, every cent of it.

Q. Every cent of it? A. Yes, sir.

Q. How much money did he pay for the land?

A. All these things passed away. I don't think I know now about that, I didn't think anything about it at the time. I can't tell exactly the amount it was; I think it was $2000, or else something like that.

Q. About $2000? A. Yes, sir.

Q. Did you draw the deed? A. Yes, sir.

Q. And deliver it to Mr. Woodwick? A. Yes, sir.

208

Q. Look at that deed and see if you recognize it?

Counsel shows a paper to witness.

A. That is the deed. I drew that deed.

Said paper just identified by the witness is marked defendants' Exhibit 1.

Q. Did you deliver this deed to Mr. Woodwich?
A. Yes, sir.

Mr. Dunn: I will introduce this deed in evidence, that has been marked defendants' exhibit 1.

It is agreed between respective counsel that as the deed is an original one, a copy of the same may be substituted for and with the same force as the original.

Q. Did you understand about the title to this land at the time, you having been Register of Deeds?
A. There was no question with me about the title.
Q. You had been Register of Deeds? A. Yes, sir.
Q. And you understood about the title to the land?
A. Yes, sir, the title on the record seemed as good as the title to your farm or to mine.
Q. The title in whom? A. In Erichsrud.
Q. Or in the Erichsrud heirs and Mrs. Erichsrud?
A. Yes, sir, it was in O. C. Erichsrud.
Q. That is the name it started with, but of course after his death the decree of the Probate Court showed on the record to whom it should go? A. Yes, sir.
Q. Did you explain the condition of the title to Mr. Woodwick? A. Yes, sir, and I gave him an abstract of the title.
Q. You gave him an abstract of the title?
209 A. Yes, sir.
Q. And you explained to him how the title came, did you?
A. Yes, sir, there was no question about that, as far as the title was concerned.
Q. I am not speaking about that? I want to know what you said to Mr. Woodwick about it?
A. I wouldn't have let Mr. Woodwick buy it, he was an old friend of mine, if it was wrong, or if I thought it was wrong.
Q. You say you furnished Mr. Woodwick an abstract of that title? A. Yes, sir.
Q. (A paper is here shown witness.) Just look at this abstract and see whether that is the abstract you furnished to him?
A. Well, that I couldn't tell you, Mr. Dunn, whether or not this is the abstract. I don't know that because I was not Abstractor at that time.
Q. But you furnished him an abstract?
A. Yes, sir, I furnished him an abstract.

Q. You took possession of the money before it was passed over to Mrs. Erichsrud? A. No, I didn't, only part of it.
Q. As far as Mr. Woodwick is concerned? A. Yes, sir.
Q. You acted as her agent?
A. Yes, sir, and the children's agent, then they were of age.
Q. Mr. Erichsrud and all these children were of age?
A. Yes, sir.
Q. And you acted as their agent?
A. Yes, sir, I acted as their agent.

210 Cross-Examination

By Mr. Gilman:

Q. You know, Mr. Brown, at the time that you sold the land to Mr. Woodwick that it was claimed by Mr. Donovan, didn't you?
A. No, sir, I didn't know it was claimed by him, but we had spoken several times about it, I will admit that.
Q. You knew that he claimed the land, did you not?
A. No, sir, I didn't know that he claimed it.
Q. Didn't you know that there was a suit, and that this suit was pending, involving the title to the land?
A. No, sir, I didn't know that at that time. I have known of it but I didn't know about it at that time, although I found out afterwards that there had been such a thing.

Mr. Dunn: You don't mean this suit, not this suit, you are speaking about the state suit?
Witness: Yes, the state suit.
Mr. Dunn: But this particular suit we are now trying?
Witness: No, I never knew anything about that.
Mr. Dunn: You never knew anything about that?
Witness: No.

Q. Did you apply to Mr. Woodwick to buy the land, or did he apply to you to buy it first?
A. I don't know; but I think that I asked several here to buy the land, because the Erichsrud people wanted to sell it, they needed the money. They wanted the money, one or two of the girls needed it. I said I would try my best to sell it, to try and find somebody that would buy it, and I spoke
211 to Mr. Woodwick about it.
Q. You spoke to him about it?
A. I spoke to Mr. Woodwick and told him, "There is a good chance for you to buy this land;" he being an old friend of mine.
Q. Didn't you tell him that there was a dispute about the title, but that the records showed a clear title in Mr. Erichsrud? A. No, sir.
Q. And that the title was safe to him? A. No, sir.

Q. Didn't you tell him there was a dispute about the title?
A. I tell you, no, sir.
Q. Was there any other writing executed to Mr. Woodwick by anyone, besides the deed, at the time he purchased or about that time? A. Any other what?
Q. Any other writing, any other written instrument given to Mr. Woodwick with reference to this land, besides the deed?
A. Not that I know of, I never saw any.
Q. Do you know who furnished the money to Mr. Woodwick to purchase the land?
A. I think I do, yes, sir.
Q. You think you do know? A. Yes, sir.
Q. Who furnished him the money?
A. Mr. Woodwick himself. He had the money, because he gave me depository checks that he had had here in the bank for some time; that is the reason.
Q. How long was it after the death of Mr. Erichsrud that you made this sale to Mr. Woodwick?
A. I don't know. It will be some ten years ago
212 when I made it. The deed will show when I made the deed, or Mrs. Erichsrud.
Q. At the time you made this sale you were not acting as the administrator of the estate? A. No, sir.
Q. You had closed up the administration?
A. Oh, yes, long before that.
Q. Did you get any commission, any pay for making this sale? A. No, sir, not a dollar, I wouldn't take it.
Q. You did it as a matter of favor to the Erichsrud people?
A. Yes, sir.
Q. To the widow and children?
A. Yes, sir, I had done lots before that for them. I had done a good many things for them.
Q. You knew Mr. Donovan at that time, didn't you?
A. I had known him for many years.
Q. Did you know at that time that the place where he lived was his homestead?
A. I suppose I could find it, I never was there. I suppose I could have found it, because I was very well acquainted with descriptions of land in this country.
Q. Did Mr. Woodwick go and examine the land before he purchased it?
A. Yes, sir, I guess Mr. Woodwick and my son went out there and examined the land first.
Q. There were no buildings on the land?
A. I don't know about that; I never was there, so I couldn't tell you how that was.
Q. You never were there? A. No, sir, I never was there.

213 Peter Hagan, a witness of lawful age produced and sworn on the part of the defendants, testifies as follows:

Examination-in-Chief

By Mr. Dunn:

Q. Where do you reside? A. Blue Earth City.

Q. How long have you resided here?

A. Twenty-one years.

Q. Did you know Mr. O. C. Erichsrud in his life time?

A. Yes, sir.

Q. Were you a business partner of his at the time of his death? A. No.

Q. Were you for some time prior to his death?

A. Yes, sir, I was.

Q. Did you know of his purchasing, during his life time, the land in dispute, which is the East half of the Northwest quarter of Section 35, Township 101, Range 28, which is the land that is in controversy here?

A. Yes, sir, I know where the land is.

Q. You know where the land is, do you? A. Yes, sir.

Q. Were you appointed one of his administrators at the time of his death? A. I was.

Q. Did you take charge of this piece of land, as one of his administrators, after his death? A. I did.

Q. Whom did you find in possession of it, when you went to take charge of it, in actual possession?

A. Mr. Thompson was on the next quarter.

Q. Who was in actual possession on this eighty?

A. Mr. Erichsrud was.

Q. I mean under him, at the time you went up there was not the land rented? A. Yes, sir.

214 Q. At the time you took possession? A. Yes, sir.

Q. That is what I mean? Who was working the land? A. Mr. Thompson.

Q. Mr. Thomas Thompson? A. Yes, sir.

Q. He worked it, as you understood, for Mr. Erichsrud?

A. Yes, sir.

Q. Was there a crop raised on the farm? A. Yes, sir.

Q. Did you take charge of the crop for Mr. Erichsrud, as administrator of his estate? A. Yes, sir.

Q. And you remained in charge of this land, with Mr. Brown, up to the time of the settlement of the estate?

A. Yes, sir.

Q. You were discharged as administrator?

A. I was, yes, sir.

Q. How much land was under cultivation while you were administrator of this estate?

A. Well, I never measured it, because Mr. Thompson broke it and put it into flax. I couldn't say how many acres there was.

Q. About what proportion should you judge of the eighty was under cultivation?

A. Well, I should judge there was about fifty acres.

Q. About fifty acres? A. Yes, sir, broke.

Q. And under cultivation?

A. Yes, sir, I couldn't say, because I never measured it.

Q. At that time was there a well defined road there on the north side of the line of the land, a road running east and west? A. Yes, sir, there was a road there.

Q. Who lived on the North side of the land?

A. Well, I don't know who lived on the North side; I suppose Mr. Donovan did.

215 Q. On the eighty north of the road? A. And West.

Q. The eighty acres north of that road is directly north of this land?

A. I have never been on Mr. Donovan's land; I don't know whether his goes down to the corner or not.

Q. There was a road on the North side of the land at that time? A. Yes, sir.

Q. How near that road was the breaking on this eighty?

A. Well, I couldn't say, because the well—

Q. Well, what I mean is, was it close up to the road, or was there a piece of prairie strip between them?

A. There was a piece of land that ran close to the road, so it was not broke.

Q. It was not broken?

A. No, there was hay on that.

Q. Do you know who cut the hay on that, the year you took charge of the land? A. Mr. Thompson.

Q. Mr. Thompson was Mr. Erichsrud's tenant, was he?

A. Yes, sir.

Q. Did you make a payment on behalf of Mr. Erichsrud for this land? A. Yes, sir.

Q. Did you receive the deed? A. Yes, sir.

Q. Did the deed come from the railroad company into your possession? A. Yes, sir.

Q. Would you know the deed if you were to see it now?

A. Yes, sir.

Q. (A paper is shown witness.) Just look at that and state if that is the deed?

A. That is the deed, that is the instrument, yes, sir.

Q. You received the deed?

A. Yes, sir, the name is right on there.

216 Said paper last shown witness is now marked defendants' Exhibit 2, and the same is offered in evidence by Mr. Dunn.

It is agreed between respective counsel that this being an original deed, a copy of the same may be made and substituted for and with the same force as the original.

Q. You say there was no one in possession of this land, except Mr. Thompson, for Mr. Erichsrud? A. No, sir.

Cross-Examination

By Mr. Gilman:

Q. This marshy piece of land that you say was next to the road extended the whole end of the eighty?

A. I couldn't say as to that, because I don't know. I don't think it did.

Q. About how far did it run? A. I don't know.

Q. Was it the east or the west side of the eighty that this marsh was on? A. It was on the north.

Q. It was on the north side?

A. Yes, sir, as far as I can remember.

Q. Was it plowed up to the road, where the land was in condition to be plowed?

A. Well, I don't know, of course I never examined that, not to see so close as that.

Q. Was it the first year after Mr. Erichsrud got the deed for the land that Thompson cultivated it?

A. He was there before he got the deed.

Q. After he got the deed did he cultivate it on shares for Mr. Erichsrud, or did he cultivate it all for himself?

217 A. He cultivated it for Mr. Erichsrud.

Q. He cultivated it for Mr. Erichsrud the first year after Erichsrud got the title? A. Yes, sir.

Q. Was he cultivating it on shares, or was he simply hired to cultivate it by Mr. Erichsrud?

A. No, sir, he was cultivating it on shares.

Q. He cultivated it on shares? A. Yes, sir.

Q. What proportion of the crop did Mr. Erichsrud get?

A. I think he got a third of the crop.

Q. A third of the crop? A. Yes, sir.

Q. How long did Mr. Thompson continue to cultivate that land after Mr. Erichsrud got the deed for it?

A. Well, it was in 1887, that is the time I had charge of the land as administrator.

Q. When you had charge of the land as administrator in 1887? A. Yes, sir.

Q. That was after the death of Mr. Erichsrud?

A. Yes, sir.

Q. How long prior to that time had Mr. Thompson been cultivating it under Mr. Erichsrud?

A. Well, not long, because he just had the land; but Thompson had it before.

Q. How long prior to his death did Mr. Erichsrud get the deed for the land?

Mr. Gilman: What is the date of the deed to Mr. Erichsrud?

Mr. Dunn: The 20th of March, 1888.

Q. When did you say Mr. Erichsrud died?

A. Mr. Erichsrud, when did he die?

218 Q. Yes? A. He died in 1888.

Q. Do you know in what month of the year it was?

Mrs. Erichsrud: The 27th of March, the same month.

Mr. Gilman: The same month?

Mrs. Erichsrud: Yes, sir, you see he came home—

Q. Then Mr. Thompson had gone into possession of it after Erichsrud got the deed, and before his death?

A. Thompson had a contract for the land before Erichsrud got it.

Q. I am speaking of the arrangement between Thompson and Erichsrud?

A. The arrangement I don't know anything about.

Q. Was there a writing between them with reference to the land?

A. I couldn't tell you about that, I was not there, because I was in Europe at the time.

Q. When you went there you found, you say you had charge of the land after Mr. Erichsrud's death, and you found Thompson there in possession? A. Yes, sir.

Q. And Thompson, you say, was cultivating it on shares?

A. Yes, sir.

Q. Was there a writing between Thompson and Erichsrud with reference to that land? A. I suppose there was.

Q. Do you recollect distinctly?

A. I never saw any writing, but I think there was, I think that was the case, because—

Q. How do you know that, you say you didn't see any writing? A. Because I had to take charge of the land.

Q. But how do you know the proportion or share that Mr. Erichsrud was to have, if there was not any writing that you knew of?

A. When I got the deed Mr. Erichsrud wrote to me

219 and told me to attend to it, and I done so.

Q. Was that during his life time?

A. Yes, sir, then I supposed he had made arrangements for cultivating the land.

Q. *You supposed he had;* but I want to know how you knew the proportion of the crop that Mr. Erichsrud was to get, if there was not any writing between him and Thompson?

A. There might have been a writing, I couldn't say as to that, because that was something I didn't know anything about.

Q. There might have been a writing of course, but how do you know that Erichsrud was to have a third of the crop?

A. That was what Mr. Thompson told me.

Q. Mr. Thompson told you that? A. Yes, sir.

Q. That is how you know? A. Yes, sir.

Q. You took Mr. Thompson's word for it, but you don't know whether there was any writing or not?

A. Probably there was a writing? A. I don't know.

Q. I don't care about probably. I want to know what you know about it. You don't recollect any writing distinctly?

A. There might have been.

Q. I don't care about your might have been. I am asking you what you know and distinctly recollect about it?

A. The only thing I recollect was this, that Thompson worked the land and Erichsrud should have a third of the crop.

Q. How do you know he was to have a third of the crop?

A. Because he told me.

Q. Who told you? A. Mr. Erichsrud.

220 Q. Mr. Erichsrud was dead?

A. No, he was here after that land was bought.

Q. Then Mr. Erichsrud after he bought the land, told you that he had rented it to Thompson, and he was to have a third of the crop?

A. There was a writing, I suppose, between the two.

Q. I am not asking you what you suppose. I ask you if you know? A. I never saw any writing.

Q. Do you know there was any?

A. I couldn't say that.

Q. You said a moment ago that Thompson told you that Erichsrud was to have a third of the crop; is that all you know of what he was to have, what Thompson told you?

A. That is all I can recollect about it.

Q. Isn't it a fact that Thompson was to have the title to the land back, if he paid Mr. Erichsrud what Erichsrud had paid out, and what Thompson owed Erichsrud, wasn't that it?

A. I don't know anything about that.

Mr. Dunn: I object to this as not cross-examination.

Q. Well?

A. I don't know that, because I was not there, I was not in possession of the land. If there was anything of that kind it must have been between the two.

Q. How long did Thompson continue to occupy the land after you took charge of it as administrator?

A. Well, I couldn't say, I don't know.

Q. How many years?

221 A. I was discharged in November, after we settled up the estate.

Q. November of what year? A. 1888.

Mr Dunn: The same year?

Witness: The same year, yes, sir.

Q. Then you had nothing to do with the land after that?

A. No, I had nothing to do with the land after that.

Q. Do you know how long Mr. Thompson continued to occupy the land after that? A. I don't know.

Q. You say you were a partner of Mr. Erichsrud, how long before his death did that partnership terminate?

A. I came here in 1879, and we were in partnership until 1886, and then I went to Europe.

Q. Then the partnership terminated a year before his death? A. Two years.

Q. Two years before his death? A. Yes, sir.

Q. Did you know Thompson at that time? A. I did not.

Q. What business were you and Mr. Erichsrud in?

A. The mercantile business.

Q. Thompson traded with your firm did he not?

A. Oh, yes.

Q. He was owing Mr. Erichsrud considerable, was he not?

A. No.

Mr. Dunn: I object to this as not proper cross-examination, and I move to strike out the answer of the witness to the last question.

Q. What did you say about that?

A. No, he was not, no more than he paid.

Q. Yes, I know he paid; but he was owing how

222 much, how much did he owe the firm?

A. Well, I couldn't tell you.

Frederick P. Brown, recalled on the part of the defendants for further examination:

By Mr. Dunn:

Q. I believe I will ask you, I think I neglected, as to what disposition you made of the money that Mr. Woodwick paid you?

A. Julia was at the time wanting to use her money, her share of it. I paid Mrs. Erichsrud one-third of the whole amount, and divided the other two-thirds between the children giving to each of them their money, so that they had it.

Q. You gave each of them their share?

A. Yes, I gave each of them their share. I think I had it on a paper; I think I gave that to Mrs. Erichsrud. I think you have got that yet among your papers, Mrs. Erichsrud?

Mrs. Erichsrud: Yes.

Q. When you made this sale to Mr. Woodwick, did you know the condition of the title to the land, to this effect; that the land was land that had been certified to the State of Minnesota for the benefit of the Southern Minnesota Railroad Company, and by the State of Minnesota transferred to the railroad company, and by the railroad company transferred to Mr. Erichsrud? Did you know that fact?

A. Certainly, because I recorded that paper myself,
223 at the time [at the time] when I was Register of Deeds.

Q. Did you inform Mr. Woodwick of that fact, and of that condition of the title?

A. Yes, sir, certainly, and not only that, but that is in the abstract he got.

Q. No matter about the abstract; I want to know whether you informed him of that fact? A. Yes, sir, I did.

Q. So he understood it?

A. Yes, sir; and Mr. Woodwick was pretty good about titles himself.

Anna Erichsrud, a witness of lawful age, sworn on her own behalf as one of the defendants, testifies as follows:

Examination-in-Chief

By Mr. Dunn:

Q. You are one of the defendants in this action, Mrs. Erichsrud? A. Yes, sir.

Q. Where do you reside? A. In Blue Earth City.

Q. You are the widow of O. C. Erichsrud? A. Yes, sir.

Q. At what time did Mr. Erichsrud die?

A. He died the 27th of March, 1888.

Q. The 27th day of March, 1888? A. Yes, sir.

Q. At what place? A. Blue Earth.

Q. Do you know the land that is in controversy in this action, the eighty acres of land in Pilot Grove? A. Yes, sir.

Q. The east half of the northwest quarter of section 35, township 101, range 28? A. Yes, sir.

224 Q. You so understand it? A. Yes, sir.

Q. You know the land, do, you? A. Yes, sir.

Q. Have you ever been to see it?

A. Yes, sir, I have been to see it.

Q. That land came to you and your children as part of the estate of your husband, did it? A. Yes, sir.

Q. Do you know whether your husband had been in possession of that land before his death?

A. Yes, I do. I saw the deed to himself when at the Hot Springs, and sent it right home to Mr. Hagan.

Q. Did you know before the reception of the deed that Mr. Erichsrud had been in possession of it under a contract from the railroad company?

A. I didn't know so very much about it, because I never inquired very much about it.

Q. So you can't say so very much about that?

A. No. I know that he bought it, I saw the deed.

Q. You know he bought it from the railroad company?

A. Yes, sir.

Q. Would you know the deed if you should see it, do you think you would know the deed if you should see it?

A. I don't know whether I would know it or not, it is so long since.

Q. I show you this paper, look and see if you can recognize that deed? A. Yes, sir, I know the deed.

Q. As the instrument you know Mr. Erichsrud received from the railroad company for this land? A. Yes, sir.

Q. You recognize the deed? A. Yes, sir.

225 Q. You didn't know then about his having possession of the land before that deed was executed?

A. I always thought it was this land, I didn't know any other party was in it.

Q. There were three children, were there? A. Yes, sir.

Q. Mabel, Julia and Ada? A. Yes, sir.

Q. The children of yourself and Mr. Erichsrud, that were left? A. Yes, sir.

Q. I will ask you if after Mr. Erichsrud death, and after the administrators were discharged from their office as administrators, if you and the children were in possession of the land up to the time you sold it? A. Yes, sir.

Q. You were? A. Yes, sir.

Q. The children were not of age at the time Mr. Erichsrud died? A. No.

Q. How old were they?

A. The youngest one was only 8½; that is Mabel.

Q. Mabel was eight? A. Yes, sir, she was the youngest.

Q. Ada was the oldest? A. Yes, sir.

Q. How old was Ada?

A. At the time Mr. Erichsrud died she was thirteen?

Q. The children had guardians appointed, or a guardian appointed to attend to their business? A. Yes, sir.

Q. Who was the first one, the first guardian?

A. Mr. Neal was the first one.

Q. Who was appointed after that?

226 A. Mr. Ross was appointed after that.

Q. Mr. E. C. Ross? A. Yes, sir.

Q. He was appointed afterwards? A. Yes, sir.

Q. Did you yourself, and your children through their guardian, have uninterrupted and undisturbed possession of that land, from that time, from the time of the discharge of the administrators, up until the time you sold it? Did you have possession? A. Yes, sir, we had possession of it.

Q. Uninterrupted possession? A. Yes, sir.

Q. Undisturbed possession? A. Yes, sir.

Q. Nobody disturbed your possession? A. No, sir.

Q. And nobody interrupted your possession? A. No, sir.

Q. What did you do with the land when it was still in your possession? A. I rented it.

Q. You rented it? A. Yes, sir.

Q. You never lived on it? A. No, sir.

Q. You rented it to various people who cropped it?

A. Yes, sir.

Q. And you had a share of the crops? A. Yes, sir.

Q. You know Mr. Michael Donovan? A. Yes, sir, I do.

Q. Did Mr. Donovan try to buy the land of you at one time?

A. Yes, he did.

Q. How long ago is that?

A. Why, I should think it was about three years ago.

Q. About three years ago? A. Yes, sir.

Q. What did he offer you for the land?

A. He offered me $19.00 an acre.

227 Q. He offered to pay you $19.00 an acre for the land, did he? A. Yes, sir.

Q. You did not sell to him, because the price was not sufficient?

A. I didn't want to take the offer at his price of payment

Q. The price was not sufficient? A. No.

Q. What he was offering you was not sufficient? A. No.

Q. I will ask you, Mrs. Erichsrud, if this sale to Mr. Woodwick was a sale, as far as you and the children were concerned, a sale in your own interest or in someone else's interest.

A. It was in our own interest.

Q. In your own interest? A. Yes, sir.

Q. Did you receive the money for the land? A. Yes, sir.

Q. Do you know whether the children received their money for the land? A. Yes, sir, I do.

Q. You heard Mr. Brown's testimony to-day, did you not?

A. Yes, sir, I did.
Q. And his testimony is as you remember it?
A. That is correct.
Q. His testimony is correct? A. Yes, sir.
Q. As to the division of the money? A. Yes, sir.
Q. You received one-third? A. Yes, sir.
Q. And the children received two-thirds? A. Yes, sir.
Q. That is of your own knowledge? A. Yes, sir.
Q. You know that to be the fact? A. Yes, sir.
Q. You authorized Mr. Brown to sell the land for you?
A. Yes, sir, I did.
Q. And he was your agent in selling that land?
A. Yes, sir, he was.
228 Q. He was agent for the children and for yourself?
A. Yes, sir.
Q. At the time he made the sale? A. Yes, sir.
Q. Did you know Mr. Woodwich at that time?
A. I knew him well enough to speak to him, yes, sir. He had not lived in town very long at that time.
Q. Mr. Woodwick had been a farmer? A. Yes, sir.
Q. In the neighborhood? A. Yes, sir.
Q. You did not make any arrangement with him yourself?
A. No, I did not.
Q. Nor the children did not, as far as you know? A. No.
Q. It was all done through Mr. Brown's agency?
A. Yes, sir. I wouldn't take it upon myself to sell anything of that kind, because I was not capable of doing it.
Q. Did you know anything about where the title to this land came from, Mrs. Erichsrud? I don't know whether you did or not? A. No, I did not.
Q. You knew nothing about it yourself? A. No sir.
Q. You took it in good faith? A. What is that?
Q. You took it in good faith?
A. Yes, sir, we took it in good faith from the railroad company.
Q. At the time you sold the land, Mrs. Erichsrud, to Mr. Woodwick, did you know anything about anyone else claiming to own that land? A. No, I did not.
Q. Mr. Donovan never claimed to own it, did he?
A. No, sir, I don't remember that he ever did.
Q. He wanted to buy it of you?
A. He wanted to buy it, yes.
229 Q. Can you give me the names of some of the people you rented the land to at the time you owned the land?
A. Mr. Samuel Moore rented it for a couple of years, and Grant Usher rented it for a number of years, and Mr. Carlisle.

Q. Did you pay the taxes on this land after you received it from your husband's estate? A. Yes, sir.

Q. Up to the time you sold it? A. Yes, sir.

Q. Do you know whether they improved the land any, whether they broke any on it during the time you owned the land?

A. Yes, sir, these last two tenants that I had told me that they had broken up some for their own benefit, to improve it, and improved it quite a little.

Q. So that do you know how much land there was really under cultivation at the time you sold it?

A. No. I think there was, I understood there was something between sixty and seventy acres.

Q. Under cultivation? A. Yes, sir.

Q. Then it was nearly under cultivation? A. Yes, sir.

Q. All that could be broken? A. Yes, sir.

Cross-Examination

By Mr. Gilman:

Q. You never lived upon the land, did you, Mrs. Erichsrud?

A. No, we never did.

Q. You were never in the actual possession of it then, never actually occupied it? A. No, we never lived on it.

Q. None of your family ever lived on it? A. No.

230 Q. There was no buildings ever on it, were there?

A. No, I don't think so.

Q. Your possession then simply consisted in your renting it to some persons who worked it on shares, did it?

A. I don't know just how to answer that question. It would be our land just the same.

Q. I am not asking you for your legal opinion about it; I am simply asking you as to what the facts were. Your possession simply consisted in your renting it to somebody else to work it on shares? A. Yes.

Q. Now you say that Mr. Donovan applied to you with reference to a purchase of the land? A. Yes.

Q. Didn't you apply to him to sell it to him. Didn't you want to sell it to him before you sold it to Mr. Woodwick?

A. No, I didn't. I didn't know Mr. Donovan until he wrote to me.

Q. He wrote to you?

A. Yes, sir. He wrote to me and came to the house one time.

Q. You say he wrote to you?

A. Yes, he wrote to me.

Q. Have you got the letter he wrote to you?

A. No, I haven't got the letter from Mr. Donovan?

Q. What did you do with it?

A. Well, I didn't think anything about it, so I didn't keep it.

Q. You haven't got the letter then? A. No.

Q. Did you ever have a personal interview with Mr. Donovan about it, did you ever have any talk with him about it?

A. Yes, sir, he came to the house and talked with me about the land.

231 Q. When was that?

A. That was about three years ago I should think.

Q. About three years ago? A. Yes, sir.

Q. That is the time he wanted to buy the land?

A. Yes, sir, that is the time.

Q. Was that the time he made an offer to you for the land?

A. Yes, sir.

Q. What did he say, if anything, about the land being his?

A. Why, I don't know as to what he said about the land being his, because—

Q. Did he say that he claimed the land?

A. No, I don't know as he did, I don't know as he said he claimed it.

Q. What did he say about the land being his, and that he was entitled to it, if anything?

A. I don't remember what the conversation was at all, I am sure.

Q. Did he claim that the land really belonged to him?

A. No, I don't know as he did. I don't remember whether he told me that or not.

Q. Can't you remember whether he said that the land really belonged to him? A. I couldn't say as to that.

Q. Did he tell you that there was a suit still pending that involved the title to the land?

A. I know there was a suit at one time. I thought that was all over with.

Q. This particular suit that is now pending, did he tell you that the land was in litigation at the time you talked to

232 him about it? A. I don't remember he told me that.

Q. You don't remember he told you that?

A. No, sir, I don't remember. I remember about the suit. I thought it was all over.

Q. You refer to the suit between him and Thompson?

A. Yes, sir, I thought it was all over.

Q. Didn't he tell you that there was a suit involving the title of the land, in which the United States was a party?

A. No, I don't remember that.

Q. You don't remember that? A. No, sir.

Q. Did he say anything about the title being in litigation at the time you had the talk with him?

A. Well, I don't know as I can remember anything of that kind, because I never thought anything about it; because I always thought the land was ours and that it was all right.

Q. But I am asking you as to what Mr. Donovan claimed at that time, at the time he talked with you about it, what he claimed about it.

Mr. Dunn: If he claimed anything.

A. I have no recollection that he claimed anything.

Q. Do you say he did not, or that you don't recollect that he did?

A. I don't remember that he said to me anything about claiming it, or that he claimed it.

Q. Why did he say he wanted to buy it?

A. He wanted to buy the place because he thought he would get it at a bargain price.

233 Mr. Dunn: And it joined his farm?

A. Yes, sir, joined his farm.

Q. You say he offered you $19.00 an acre for it?

A. Yes, sir.

Q. And you finally sold it to Mr. Woodwick for $20.00 an acre? A. $22.50 an acre.

Mr. Gilman: $2000 I think the deed is.

Mr. Dunn: That is $25.00 an acre. $2000 is $25 an acre for eighty acres of land.

Q. The fact is whatever consideration is expressed in the deed is the correct consideration.

A. It may be $2000, but I got it in my mind it was $22.50 an acre.

Q. Did you tell Mr. Donovan at the time what he could have the land for?

A. I don't just remember whether I offered it him and made him a price for it or not. I know I didn't want to sell it at the price he offered me.

Q. Did you know at the time of the death of your husband that the land was still in litigation, or that the title to the land was still in litigation? I don't refer to the Thompson suit, but after that, that the title to the land was still in litigation, did you know that? A. No, I did not.

Q. When did you first hear of that, of the action now pending in this suit? A. Why, when I got that notice.

Mr. Dunn: When you were served with the summons.

Witness: Yes, sir, I was surprised when I heard that
234 this was in court again.

Q. Did you execute any other writing to Mr. Woodwick, besides the deed, with reference to this land, at the time you sold to Mr. Woodwick?

A. No. I don't know that Mr. Brown did. He arranged all that.

Mr. Dunn: Did you execute any other writing to him?
Witness: No.

Q. Did you sign any other paper? A. No, I did not.
Q. Did you give him any other paper? A. No.
Q. Besides the deed? A. No, I don't think so.
Q. You don't know of any person that did execute any other writing to Mr. Woodwick, besides the deed, with reference to this land? A. No, I do not.

Mr. Dunn: There was a lot, was there not, that he wanted you to take? A. Yes.
Witness: Yes.
Mr. Dunn: That was one thing you objected to?
Witness: Yes, sir.

Q. What lot was that?
A. That was a lot in this town, in the east part of town.
Q. What town? A. Just the village here.
Q. The village of Blue Earth? A. Yes, sir.
Q. What did he want you to take that at?
A. $300. I didn't want to take any more property; I felt I had too much on my hands to pay taxes on as it is, and I didn't want to take any more.

235 Mabel Anderson, a witness of lawful age, called on the part of the defendants, being duly sworn, testifies as follows:

Examination-in-Chief

By Mr. Dunn:
Q. Your name prior to your marriage was—
A. Mabel Erichsrud.
Q. You are a daughter of Mrs. Anna Erichsrud and O. C. Erichsrud? A. Yes, sir.
Q. And one of the children spoken of here? A. Yes, sir.
Q. And one of the defendants in this suit? A. Yes, sir.
Q. Do you know anything about this land in question?
A. I don't know anything about the land, of course at the time the land was sold I didn't know anything about it. I only know the only thing I can testify to is I remember the time that Mr. Donovan came to our house to buy the land. That is all I know about it.
Q. We will get to that later on. You know nothing about the land?
A. No, but I was there. I don't know anything about the land.

Q. Did you receive your portion of the purchase money from Mr. Brown, as he testified to? A. Yes, sir.

Q. You signed the deed to Mr. Woodwick?

A. Yes, sir, we all signed it.

Q. Was that sale made in your own interest, or was it for the interest of someone else.

A. It was made for our own interest; we needed the
236 money more than the farm.

Q. Was the sale made in good faith to Mr. Woodwick? A. Yes, sir.

Q. And not for the purpose of concealing the title?

A. No, sir.

Q. Or anything of that kind?

A. We didn't know that the title was in dispute at that time. We simply sold it as a money matter.

Q. You never knew the title was disputed? A. No, sir.

Q. Who had been your guardians until the time you came of age?

A. Mr. Neal, as I remember, originally, and then Mr. Ross was my guardian.

Q. Mr. Neal was your guardian before he died?

A. Yes, sir. And Mr. Ross afterwards. I was of age when Mr. Ross came to be guardian.

Q. You were? A. Yes, sir.

Q. But the other girls were not?

A. No, sir, the other girls were, but I was not.

Q. Do you know anything about Mr. Donovan trying to buy the land? A. I was at home when he came.

Q. Do you remember the conversation between him and your mother?

A. The only part of it that I remember— They stood by the back door most of the time, and as I passed through I heard a little conversation about it. I couldn't tell what it was. I didn't know what he was trying to do. I didn't know who was trying to sell the land. I didn't know whether she was buying it of him or whether he was buying it of her; but I knew they were having a land conversation, I knew they were talking about land.

Q. But you didn't know what they said?

A. No, sir.

237 Q. You know he was there? A. Yes, sir.

Q. You know Donovan was there?

A. Yes, sir, I know Mr. Donovan was there.

Q. And that they had some talk about land? A. Yes, sir.

Q. You don't know what it was, that is you don't know what they said?

A. No, sir, I don't know what they said. I know they had some talk about land.

Wayne Silliman, a witness of lawful age, produced and sworn on the part of the defendants, testifies as follows:

Examination-in-Chief

By Mr. Dunn:

Q. Where do you live, Mr. Silliman? A. Blue Earth.

Q. How long have you lived in this County, In Faribault County, Minnesota? A. Since the Spring of 1858.

Q. Since the Spring of 1858? A. Yes, sir.

Q. You are one of the oldest settlers we have got here then? A. I suppose I am.

Q. Did you ever reside in the town of Pilot Grove?

A. I did.

Q. You know Michael Donovan? A. I do.

Q. That is the town he lives in, Pilot Grove?

A. Yes, sir.

Q. What were you doing in that town? What business were you engaged in then? A. Farming.

Q. Was there or was there or not a large quantity of government and railroad lands in that town when you moved in there?

238 A. There was considerable railroad land and some government land.

Q. About half the land was railroad land, was it not?

A. A large portion of it was.

Q. I mean as early as 1858? A. In 1858, yes.

Q. It was most all government in 1858, was it not?

A. Yes, sir, all government land in 1858.

Q. And in 1866 and 1867, after the land grant to the railroad company, there was a good deal of railroad land there, was there not? A. Yes, sir, there was.

Q. Did you know a piece of railroad land that adjoined Mr. Donovan's farm, south of his farm, did you know it?

A. I know there was a piece of railroad land in there; but I am not very conversant with it.

Q. You were engaged in farming at that time?

A. Yes, sir, I was.

Q. Was your farm adjoining some other land that was belonging to the railroad company? A. Yes.

Q. That was a part of the old S. M. Railroad Company's grant; do you know what that was? A. Yes, sir.

Q. You know what I mean when I say the old S. M., the old Southern Minnesota Railroad grant of land? A. I do.

Q. You have been engaged in a public office as Register of Deeds, and in the auditor's office, so you understand all about that grant, don't you? A. Yes, sir, I do.

Q. I want to ask you as to what you are able to state as to whether the early settlers in that town were in the habit
239 of breaking and farming and using vacant railroad company's land that happened to lie adjoining their farms?

A. Well, I know there was some railroad land right there close by me that was broken and cultivated for a number of years.

Q. Broken and cultivated?

A. Yes, sir, and there was also some there that they cut hay on and used it for pasture and herded cattle on it.

Q. That was done by the settlers? A. By the settlers.

Q. Was that a frequent or an infrequent occurrence?

A. I could not say that it was a frequent thing there, for the settlers for to herd their cattle on the railroad land or cut hay on it.

Q. You should say it was a frequent thing? A. Yes.

Q. You say you do understand that it was a frequent occurrence?

A. It was in the vicinity of where we were, on railroad land, and there was a piece, there was a crop in and it was broke and cultivated for a number of years while it was railroad land.

Q. They would break and cultivate it while it was railroad land? A. Yes, sir.

Q. And when the land should be sold by the railroad company to some private individual, what would the settler do then? A. He would simply quit it.

Q. Simply quit? A. Yes, sir, he would quit.

Q. And surrender it up to the purchaser? A. Yes, sir.

Counsel for plaintiff objects to this testimony as immaterial, incompetent and irrelevant.

240 Q. Do you know several instances of that kind?

A. Well, I knew several pieces of land that was—

Q. Used in that way? A. Used in that way, yes, sir.

Cross-Examination

By Mr. Gilman:

Q. How far did you reside from Mr. Donovan?

A. I think it must have been four or five miles.

Q. Four or five miles from him? A. Yes, sir.

Mr. Dunn: I wish to introduce in evidence in this cause part of the record in the case of the United States v. The Winona & St. Peter Railroad Company and others, found in the 165 U. S. Supreme Court Reports, on page 463; the part that I introduced in evidence is found commencing with the words "that on, before and for a long time" on the ninth line of page 465, and ending with the word administered" on the

tenth line of page 466, except the paragraph thereof marked "f."

I wish to introduce this as an admission on the part of the government of the United States the plaintiff in this case as relating to the issue which we are now trying.

Mr. Gilman: I object to it as immaterial, incompetent and irrelevant, and also because the admission in that case in the 165 U. S. was limited to the issues in that particular case.

The portion referred to by counsel for defendants in the case of the Winona & St. Peter Railroad 165 U. S., 465, 466 is as follows:

241 "That on, before and for a long time after the certification of the lands in question to the State on account of the railroad grants it was uniformly held and ruled by the Secretary of the Interior and the other officers of the land department of the United States; (a) That the line of a railroad became and was definitely fixed so as to attach the grant to the odd-numbered sections within the granted limits as soon as surveyed, staked out and marked on the face of the earth; and (b) That a homestead entry in all respects regular and legal excepted the land covered thereby from the operation of a railroad grant attaching during the existence of such entry; that the validity of a homestead entry was open to question by the company, and if it was shown that such entry was fraudulent or irregular in its inception, or that it had been abandoned before the right of the road attached, it was held not to except the land from the grant, but the burden of so showing was upon the company, and, in the absence of such proof, the entry being valid upon its face, was held to except the land from the grant, even though subsequently abandoned; and (c). That a preemption claim, which may have existed to a tract of land at the time of the attachment of a railroad grant, if subsequently abandoned, and not consummated, even though in all respects legal and bona fide, was held not to operate to defeat the grant, but, upon the
242 failure of such claim, the land covered thereby was held to inure to the grant as of the date when such grant became effective; and (d) That the rights under the grant attached to the lands in the granted and indemnity limits as of the same date, and that selection was not deemed necessary to attach the grant to any specific tract within the indemnity limits; and (e) That the lands within the indemnity limits were withdrawn at the same time as those within the primary or granted limits; ..... and (g) That in pursuance of and in accordance with the aforesaid rules, the grants to and for each and all of the land-grant railroad com-

panies in the State of Minnesota were, before, at and for a long time after the certification of the lands in question, administered."

243 Louis K. Woodwick, a witness of lawful age, produced and sworn on the part of the defendants, testifies as follows:

Examination-in-Chief

By Mr. Dunn:

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. Where do you reside? A. Blue Earth City.

Q. How long have you resided in Blue Earth City?

A. It will be three years next March.

Q. Before coming to Blue Earth City where did you reside?

A. I resided fourteen miles out in the country for thirty-five years.

Q. Do you mean to say in this County, Faribault County, State of Minnesota? A. Yes, sir, Faribault County.

Q. Did you sell your farm there? A. Yes, sir.

Q. How much did you receive for it?

A. How much did I get for it?

Q. Yes. A. I got $37.50 an acre.

Q. How many dollars altogether?

A. Six thousand dollars.

Q. You brought that money to Blue Earth City with you?

A. Yes, sir.

Q. And since that time you have lived here, have you?

A. Yes, sir, I have.

Q. Did you purchase a piece of land from Mrs. Erichsrud and her children, through the agency of Mr. F. P. Brown at any time? A. Yes, sir.

244 Q. I show you defendants' exhibit 1, and I will ask you if that is the land described in that deed that you purchased? A. Yes, sir.

Q. That is the deed? A. That is the deed, yes, sir.

Q. Defendants' exhibit 1 is the deed that you received on your purchase, is it? A. Yes, sir.

Q. Did you pay the full consideration specified in that deed? A. I did.

Q. $2000? A. Every dollar of it.

Q. Was it your own money or somebody else's money?

A. No, sir, it was my own money. I paid $25.00 more than that, but that is not mentioned in the deed.

Q. You didn't pay $25.00 more. No, you told me what you paid that $25.00 for, it was for something else.

A. Yes, sir, it was for something else.

Q. It had nothing to do with the land?
A. No, sir, I paid $2000 for the land.
Q. Did you see this land before you bought it?
A. Yes, sir.
Q. You went out and examined it, did you?
A. Yes, sir, I did.
Q. Before you bought it? A. Yes, sir.
Q. How much land was there under cultivation when you bought it?
A. Well, it was all except ten or twelve acres, somewhere about that; probably fifteen acres, I wouldn't say as to that. It was all broke up that could be broke up.
Q. All that could be broken was broken? A. Yes, sir.
Q. When you bought the land of Mr. Brown he fur-
245 nished you an abstract of title, as he testified, did he not? A. Yes, sir.
Q. I will ask you to look at this paper which I show you and see whether this is the abstract of title that was furnished to you at the time you bought the land of Mr. Brown, and upon which you relied, if you did rely upon the statements therein contained, when you bought the land.
A. That is the one.
Said paper writing is marked Defendants' Exhibit 3, and is offered in evidence for counsel for defendants.
Mr. Gilman: I object to it as immaterial, incompetent and irrelevant.
Mr. Dunn: I ask you if you object to it because it is not an original record.
Mr. Gilman: No, I do not object to it because it is not an original record. It is a certified copy of the record I suppose.
Mr. Dunn: It is certified to by the abstractor of the County.
Mr. Gilman: No doubt about that.
Mr. Dunn: You don't object to it because it is an abstract?
Mr. Gilman: No, I don't object to it upon the ground of its being an abstract, but simply because it does not contain anything that is relevant or material or competent in this case; even if you had the original papers present here that are referred to in the abstract.
246 Mr. Dunn: The objection simply goes to the materiality of the paper and of the records themselves?
Mr. Gilman: Yes.
Mr. Dunn: In other words, you waive the production of the original instruments?
Mr. Gilman: I don't insist that the original instruments should be produced. My objection is not based upon the ground that they are not produced.

Mr. Dunn: Or even certified copies of them?
Mr. Gilman: Or even certified copies of them.

Q. Did you rely when you purchased that land upon the fact that this land was land which was originally certified and granted to the State of Minnesota for railroad purposes, and by the State of Minnesota deeded to the railroad company, and by the railroad company deeded to Mr. Erichsrud?
A. I did.

Counsel for plaintiff objects to the land question as leading.

Q. You did? A. Yes, sir.
Q. You relied upon that? A. Yes, sir.

Counsel for plaintiff objects to the question as leading.

Q. What did you rely upon? You may state what you did rely upon? A. I relied upon the government and the State.
Q. That the State did what?
A. Transferred it to the railroad company.
Q. And who transferred it to the State?
A. The government.
Q. The United States government?
A. Yes, sir, and the State of Minnesota.
247 Q. The United States government and the State of Minnesota? A. Yes, sir.
Q. Whom did the railroad company transfer it to?
A. O. C. Erichsrud.
Q. You relied upon that fact?
A. Yes, sir, I did. If I hadn't I wouldn't have bought it.
Q. You paid $2000 for it, did you not?
A. I did, cash down.
Q. Did you have any notice of any kind that Mr. Donovan claimed to own that land, or had any claim on that land?
A. No, sir, never, I didn't know about it. If I did I wouldn't have bought it.
Q. You had no notice of that character or description, that anybody was claiming the land? A. No, sir.
Q. Did you enter upon possession of the land after you bought it, in any way?
A. Mrs. Erichsrud assigned a contract to me that she had already for it. She let it in the Spring of the year that I bought it, and when I bought it she assigned the contract to me, and I received the share that Fall, in her place.
Q. You say there was somebody had rented the land of Mrs. Erichsrud? A. Yes, sir.
Q. What was his name? A. Carlisle.
Q. Sam Carlisle, was it not? A. Yes, sir.

Q. You received an assignment of that paper from
248 Mrs. Erichsrud? A. Yes, sir.

Q. At the time you bought the land? A. Yes, sir.

Q. I show you a paper writing, did you ever see that before? A. Yes, sir, that is the contract.

Q. Is that the paper you received at that time?

A. Yes, sir, that is what she assigned to me.

Said paper writing is now marked defendants' exhibit 4, and is offered in evidence by counsel for defendants, together with the assignment on the back of the same.

Q. You received that from Mrs. Erichsrud? A. Yes, sir.

Q. When you bought the land?

A. Brown got it for me.

Q. You received it from him? A. Yes, sir.

Q. From Mr. Brown? A. Yes, sir.

Q. Did you take possession of the land then? A. I did.

Q. With Mr. Carlisle? A. Yes, sir.

Q. He recognized you as his landlord?

A. He did; there was no dispute.

Q. Nobody disputed your possession?

A. Not at all, and I received the share of the crop.

Q. Did you see Mr. Donovan when you went up there?

A. No, I didn't know about him. I was up there when they threshed the grain.

Q. Did he go over there and make any claim of the land?

A. No, sir, he did not.

Q. Did he make any claim to a share of the crop,
249 or anything of that kind? A. No, sir, he did not.

Q. Then you bought the land, acting in good faith, for yourself? A. Yes, sir.

Q. There was no secret understanding between you and Mrs. Erichsrud, that you should hold the land for them or cover it up in any way for them?

A. No, sir, not the least.

Q. Nothing of that kind? A. No, sir, not a thing of it.

Q. What is that land worth? A. Now?

Q. Yes, what is the land worth now?

A. Probably it is worth about $40.00 an acre. It is within two miles of the Village of Elmore, about three miles west.

Q. You have been on the land a good many times.

A. Yes, sir, I have been on there several times.

Q. You have been on the land several times?

A. Yes, sir.

Q. And you are still in possession of it? A. Yes, sir.

Q. How much was broken up?

A. It is all now broken up, except between ten and twelve or fifteen acres, that couldn't be broken. That is bottom land.

Q. Was there any fencing on the land? A. No, sir.
Q. When you bought it? A. No, sir.
Q. Is there a road between that eighty that you bought and the eighty north of it, upon which Mr. Donovan lives?
A. There is.
Q. Is it a well defined road?
A. It is like one of these common roads.
Q. Is it fairly well traveled? A. Yes, sir.
Q. So you could travel it very well? A. Oh, yes.
Q. How is the condition of the breaking on the south
250 side of that road on this eighty? How near up to the road does the breaking come?
A. He broke pretty close to the line on both sides.
Q. On both sides?
A. Yes, sir, where it could be broke. There is a kind of a slough that runs in there; of course, they couldn't break that. Of course I didn't know exactly where the line ran, but it appears to me they broke it on both sides, as close as they could, without interfering with the road?
Q. You never saw this land until about the time you bought it? A. No, sir.
Q. You are an old settler of this county?
A. Yes, sir, I have lived in this county thirty-five years?
Q. Thirty-five years? A. Yes, sir.
Q. You have been a farmer?
A. Yes, sir, until two years ago.
Q. Do you remember about the time that the railroad lands were granted to the State of Minnesota for what we call the Southern Minnesota Land Grant? A. Yes, sir.
Q. You were living here before that, were you not?
A. Yes, sir.
Q. There was some railroad land I believe in your neighborhood? A. Every odd section was railroad land.
Q. Every odd section?
A. Yes, sir, Not when I came into the country, but afterwards, that was what they called them, they called them railroad lands, I supposed they were. Of course I didn't examine the record.
Q. It was Southern Minnesota Railroad land? A. Yes, sir.
Q. Do you know whether it was then the custom among the settlers of this County to use this land and make hay on
251 it, and make such use of it as they wanted to.

Objected to by counsel for plaintiff as immaterial and incompetent.

A. Yes, sir.
Q. Do you know whether there was such a custom?

A. They did, they did, every one of them did it in my neighborhood. They cut hay, made hay on it. The first man was the best man always.

Q. Did they frequently do that?

A. Yes, sir, they would make a furrow there and they cut hay there, and they would go on and break it. They would use it as long as they could. There was no objection to it either.

Q. Then that is the custom in that town?

A. It was in my neighborhood.

Q. It was the custom down there? A. Yes, sir.

Q. How far did you live from Mr. Donovan's land?

A. It must have been fifteen or sixteen or seventeen miles.

Q. You lived there then in what part?

A. Northeast of Elmore.

Q. You lived in the same County? A. Yes, sir.

Q. The same County, Faribault County? A. Yes, sir.

Q. And you say it was not an uncommon thing to see railroad land broken up by some one else who didn't own the land.

Objected to as immaterial, incompetent and irrelevant, and also as leading.

Q. Was it an uncommon thing?

A. No, sir, it was not.

252 Q. It was not uncommon? A. No, sir.

Cross-Examination

By Mr. Gilman:

Q. What was this land worth when you bought it?

A. Well, I couldn't say. I know what I paid for it.

Q. What in your judgment was it worth?

A. I thought it was pretty cheap; that is the reason I bought it.

Q. What in your judgment was it worth?

A. Well, perhaps it was worth, probably $30.00 an acre.

Q. Did you buy it for cultivating it and occupancy? Did you buy it for cultivating it, or did you buy it for speculation?

A. I bought it because I thought it was worth the money. I thought I might as well have the money in that land as to have it lying idle.

Q. You were not farming at the time?

A. No, sir, I was not. I had sold my farm.

Q. You were living here in Blue Earth City?

A. Yes, sir, in Blue Earth City.

Q. You expected to sell the land when you got an offer of what you thought it was worth? A. I would.

Q. You say that you had no information that the title to the land was still in dispute?

A. No, sir, I had not, Mr. Gilman.

Q. Did you know that it had ever been in dispute?

A. No, sir, I didn't know it until afterwards.

253 Q. When did you first hear of the pendency of this present action?

A. It was when Mr. Sheehan served notice on me, the deputy United States Marshal.

Q. When you were made a party of this action?

A. Yes, sir, that was the first time I knew about it.

Q. You didn't know that this land was in dispute, or in litigation until that time? A. No, sir, I did not.

Q. Had you had any talk with Mr. Donovan before that service was made on you, with reference to this land?

A. No, sir, not at all, not about the land. I just knew the old man before; but not a word was spoken about the land anyway.

Q. Didn't you have a talk with him, and didn't he tell you that he claimed the land?

A. He talked some about it, he thought, he said that he thought it ought to be his land.

Mr. Dunn: Was that before you bought it or afterwards?

Witness: No, sir, it was after I bought it.

Q. Before? A. No, sir; it was after.

Q. Didn't you have a talk with him before you bought it?

A. No, sir, I didn't. When I talked with [his] it was afterwards.

Q. You had talked with him before you were made a party to this suit?

A. No, sir, it was quite a while after I bought it.

Q. Was it not before you were served with notice and brought in as a party to this suit? A. No, sir.

Q. You were not brought in as a party to this action until last spring?

A. No, I didn't know anything about it until that time?

254 Q. You knew that Donovan claimed it, before that time?

A. Well, we had possibly talked back and forth, but I had no absolute claim to depend on.

Q. Didn't Donovan come there after you bought the land, and before you were brought as a party to the action in this suit, and didn't Mr. Donovan come there and have a talk with you and tell you that he claimed the land?

Counsel for defendants objects to the question as immaterial, and that anything that this witness did after he bought the land is immaterial.

Q. Do you not recollect that? Don't you recollect that he talked sometimes about that land?

A. I don't remember it, I don't remember that he did. I shouldn't feel—

Q. He claimed the land, didn't he? Didn't he claim that it belonged to him?

A. I can claim a good many things myself.

Q. I am asking you what he did. A. He didn't claim it.

Q. Didn't he claim that the land belonged to him?

A. He talked about it ought to be his homestead.

Q. It ought to be his homestead?

A. That is what he said. He talked about it, but I didn't pay any attention to that, because I bought the land in good faith, and I thought my title was all right.

Q. You knew this, that he told you that he ought to have the land?

A. That was long after I had bought it.

255 Mr. Dunn: I desire to interpose an objection to all this testimony as to what conversation was had with Mr. Donovan, or what took place with him subsequent to the purchase of this land, by the witness; and I move to strike out the same as immaterial and incompetent.

Q. You never heard that he claimed the land before you bought it? A. No, sir.

Q. Didn't Mr. Brown say that there was a suit involving the title to the land, pending? A. No, sir.

Q. You never heard of the pendency of this suit?

A. No, sir. No, sir, I did not.

Re-direct Examination

By Mr. Dunn:

Q. You had never heard of any suit?

A. No, sir; not until after I bought. Mr. Graham told me there had been an action in court, and that Donovan was beat. That was all I ever heard of it.

Q. That was about Thompson's suit? A. I suppose so.

Mr. Dunn: I now introduce in evidence the final decree in the matter of the estate of O. C. Erichsrud, deceased, being the decree of the Probate Court of Faribault County, dated November 7th, 1888. The same being duly certified by the judge of probate, together with the certificate of the judge of probate and also the certificate of the recording of said paper.

Said paper writing is marked defendant's Exhibit 5.

256 Mr. Gilman: I object to the same as immaterial, incompetent and irrelevant.

It is agreed between counsel that Exhibit 5 being the final decree in probate court, and the original thereof, that a copy of the same may be substituted in the record in place and with the force of the original.

Mr. Dunn: I also desire to introduce in evidence the filing on the back of the record on defendants' Exhibits 1 and 2.

William E. C. Ross, a witness of lawful age, produced and sworn on the part of the defendants, testifies as follows:

Examination in Chief.

By Mr. Dunn:

Q. Where do you reside ? A. Blue Earth City.

Q. How long have you resided here? A. Since 1872.

Q. What is your business now, and what has it been?

A. Banker.

Q. Were you acquainted with Ole C. Erichsrud in his life time? A. Yes, sir.

Q. Did you know his children Mabel, Julia and Ada?

A. Yes, sir.

Q. Were you ever appointed guardian for either of those children? A. I believe I was.

Q. For which one of them, do you remember?

A. All of them.

Q. For all of them? A. I think so.

Q. You succeeded Mr. Neal in his guardianship, did you not?

A. Yes, sir.

Q. Did you as guardian for those children have any-
257 thing to do with the east half of the northwest quarter of section 35, township 101, range 28?

A. I did, yes, sir.

Q. Did you have that land in your possession and charge at any time? A. Yes, sir, I did.

Q. For the children? A. Yes, sir.

Q. In company with Mrs. Erichsrud, the mother of the children? A. Yes, sir.

Q. For how many years?

A. I was appointed the 28th day of October, 1891.

Q. How long did you discharge your duties?

A. I made a final accounting the 18th of July 1894.

Q. And you were discharged? A. Yes, sir.

Q. From your duties? A. Yes, sir.

Q. As guardian? A. Yes, sir.

Q. Did you take care of the land in connection with Mrs. Erichsrud's interest in it and the children's interest during those years? A. Yes, sir

Q. What did you do in that connection? A. I rented it.

Q. You rented it? A. Yes, sir.

Q. And took charge of the grain? A. Yes, sir.

Q. Was there anyone else in possession, except yourself and Mrs. Erichsrud on that land during that time, except the tenant that was under you? A. No, sir, there was not.

Q. There was nobody but yourself in possession? A. No, sir.

Q. Or in control of it? A. No, sir.

Q. Were you ever on the land?

258 A. No, sir, not to my knowledge. I might have been on it.

Q. You know it by description? A. That is all.

Q. From your tenant? A. Yes, sir.

No cross examination.

Defendants rests.

Michael Donovan, recalled on the part of the plaintiff, in rebuttal, testifies as follows:

Examined

By Mr. Gilman:

Q. Mr. Donovan, did you hear the testimony of Mrs. Erichsrud, as to your offering to buy this tract of land in question, and offering her $19.00 an acre for it. Did you hear that testimony? A. Yes, sir, I heard it.

Q. What have you to say with reference to the conversation you had with Mrs. Erichsrud, in regard to this land? How did it come about, and what was said?

A. She wrote me a letter before she sold the land to Mr. Woodwick; she wanted me to come in and see her—

Mr. Dunn: I object to the witness testifying as to the letter, because it is not the best evidence, but the letter itself is the best evidence.

259 Q. Have you got the letter?

A. No, sir, I have not got the letter.

Q. Where is it? A. It was destroyed. I didn't save it.

Q. You didn't save it? A. No, sir.

Mr. Dunn: We object to the testimony until the letter is accounted for, upon the ground that this is not the best evidence of the writing.

Q. You may state about the letter, what became of it?

A. I didn't save it, but it was destroyed, of course, in my pocket, and got torn I suppose. I didn't save it. I didn't pay any attention to the letter, just let it go. I waited for a while

and then I came to town after she wrote to me, I came in in a few days and came to see her.

Q. What did the letter request you to do?

A. The letter requested me, it said she would like to see me, she would like to give me the first chance to sell me that land.

Q. Did you go to town and see her?

A. Yes, sir. I did go and see her.

Q. What took place then?

A. I went to the house and says to her, "You wrote me a letter," and she says, yes, she said, "You are an old man, and I want you to have that land and give you a chance for to buy it." I said, "Mrs. Erichsrud, I couldn't buy my own homestead. You know it is in dispute." She said, "If you buy the land, if you beat the company, you will get the money back." I said, "I don't want to buy it, but I tell you, if I am beat, if the court beats me, may be, I would like to buy it if you have it to
260 sell. Then if I was beat in court, if she had not sold the land I would like to buy it." Then I says, "I have a lot in town, and we might make a trade if I was beat." At this time her daughter Mable was there and she must have heard some of the conversation I had; she and her mother, her mother and I was at the house, she was by there part of the time. I stayed there but a few minutes and left her.

Q. That is the only conversation you had with her?

A. Yes, sir, that is the only conversation I had with her about the land.

Q. About the land?

A. Yes, sir, she wrote me a letter about the land.

Cross-Examination

By Mr. Dunn:

Q. When was this?

A. It was sometime prior, before she sold the land.

Q. No, no, when was it, what time was it?

A. It must have been, it must have been over, it must have been three, two or three years ago this spring. No, I can't say certainly.

Q. You can't say certainly?

A. No, sir, I couldn't say, it was either two or three years this spring.

Q. What month was it?

A. What month was it? It was in the spring time of the year, in the spring of the year, in the spring.

Q. Where did you see Mrs. Erichsrud?

A. I saw her at her own house. I went to her own house, because she wanted to see me. She wrote to me, she wrote me a letter—

Q. Don't amplify so much, That is enuogh.

261 A. I went to her house. She wanted to see me.

Mr. Dunn: I want to ask Mr. Donovan another question, although it is not cross-examination, but I may as well ask him now.

Mr. Gilman. Are you going to call him as your witness? Do you make him your witness?

Mr. Dunn: No, I will call him in connection with his former testimony, as examination, now that he is on the stand. I don't need to make him my witness formally.

Q. You tried to buy this land of the railroad company, did you not, before they sold it to Mr. Thompson?

A. The agent was there, and offered me the land for $7.00 an acre.

Q. And you tried to buy it? A. No, sir.

Q. You didn't try to buy it? A. No, sir.

Q. Didn't you testify in the district court in this county, in the suit that you brought against Thomas Thompson that you tried to buy that land of Mr. Rasmussen?

A. Mr. Rasmussen came to me and told me—

Q. Never mind about that. Didn't you testify to that?

A. I don't know whether I did; it was so long ago. I could have got it for $7.00 an acre.

Q. Didn't you testify in the district court in this county that you tried to buy that land?

A. I don't believe I did. The agent offered it me, I know he wanted me to buy it. I don't believe I did. He wanted me to buy it.

Q. I didn't ask you whether he wanted you to buy it. I asked you whether you didn't testify to that?

262 A. I can't remember, because it is so long ago.

Q. You can't remember?

A. No, sir, I can't remember. I know that I didn't try to buy it.

Q. Did you ever try to buy it?

A. To the best of my knowledge and belief, I don't think I ever tried to buy it of the railroad company, because—

Q. Never mind about your because, I don't care about your because. We will never get through. Just say yes or no. You say you can't remember? A. No, sir.

Q. You had a law suit with Mr. Thompson, didn't you?

A. You know it.

Q. I know it, but Judge Lochren doesn't know it, and we are talking for Judge Lochren's benefit. You had a law suit with Mr. Thompson, didn't you, Mr. Donovan, you brought an action against him, to dispossess him from the land, to dispossess Thomas Thompson? A. Yes, sir.

Q. You did commence that case? A. Yes, sir.
Q. And that case was decided against you? A. Yes, sir.
Q. There was a judgment? A. Yes, sir.
Q. And you never appealed from that judgment?
A. No, sir.
Q. You went to work and paid the costs, and paid the judgment and stopped it?
A. Yes, sir, but I don't know what that has to do with this case.

Mr. Dunn: That is not for you to say whether it has or not.

Q. Do you know when the road was laid out between
263 these two eighties, when it was laid out by the authorities? A. I should think. You have got the record.
Q. About when was it?
A. I don't know, but the road was laid out before Mr. Thompson bought the place; I know that much.
Q. Mr. Bugge was one of the supervisors?
A. I don't know. I know Mr. Ogilvie was chairman. The road was laid out before Mr. Thompson bought the tract.
Q. Do you know whether you got any damages for the laying out of that road?
A. We never asked any damages for a road on a section line.
Q. I asked you the question whether you got any damages?
A. I never asked for any damages, because I supposed—
Q. Never mind about that, never mind what you supposed, don't argue with me?
A. I never asked any. I didn't get any damages, and I never claimed any damages.
Q. Then just say so then.
A. I never claimed any damages, I didn't get any damages; I didn't want them.
Q. After the termination of that law suit you never went upon that land after that, did you?
A. Yes, sir, I went on it to open the ditch and keep it open.
Q. You went on it to keep the ditch open?
A. I dug a ditch and kept it open.
Q. Who was in possession of the land then?
A. Mr. Thompson was in possession of the land then. I kept the ditch open right along.
264 Q. That was a ditch that drained your own land?
A. Yes, sir.
Q. That was all the way you had to drain your own land?
A. Yes.
Q. It drained right down on to that eighty? A. Of course.
Q. Wasn't that the only way you had to drain your own land? A. It was the only run way for the water.

Q. When you opened the ditch on that eighty, you opened it for the purpose of draining your own land, and draining it down there? A. It drained that land too.

Q. You didn't do it to drain that land?

A. I did it on that eighty because it was swampy and wet.

Q. But you were draining your own land?

A. I did it with the other.

Q. You were draining your own land, were you not?

A. With the other too. It drained a part of the swamp on both eighties.

Q. Didn't the water remain on that eighty? A. No, sir.

Q. Would that ditch drain it off that eighty?

A. The ditch is there yet to drain this eighty off.

Q. Where does it drain it to?

A. There is a creek runs from the corner from that eighty down to the river, a kind of a pathway for the water.

Q. Was that all you did? A. That is all.

Q. What year did you dig that after Mr. Thompson was in possession there? A. What year?

Q. Yes, after Mr. Thompson was in possession what year did you dig the drain? A. I don't understand.

265 Q. What year was it after Mr. Thompson was in possession that you dug any drain there?

A. I dug the ditch. The ditch was dug when Thompson was on the land after he bought it. I dug the ditch after he came on to the place.

Q. You dug it after that?

A. After Thompson got it I dug the ditch.

Q. There was no ditch there before that? A. No, sir.

Q. Who helped you with that ditch? A. Mr. Curtis.

Q. Didn't Mr. Thompson help you to dig the ditch?

A. No, sir, Mr. Thompson didn't help me.

Q. What year was it?

A. I think it was the first year that Thompson came on to the place.

Q. Was it before or after your law suit with him?

A. I couldn't say as to that, but it was when Thompson was a resident on the land that I dug the ditch.

Q. Did he live on that land?

A. No, sir, he didn't, he didn't live on that land, he lived on the adjoining land.

Q. How much did Thompson break up on that land?

A. Thompson?

Q. Yes. A. I never surveyed it.

Q. I don't suppose you did, but about how much did he break up?

A. I should think—I shall have to think how much Mr. Moore broke. He broke some of that land besides Mr. Thompson. I don't know how much Mr. Thompson broke.

Q. It is all broke up now pretty much?

A. I think there is very near sixty-five acres under cultivation.

Q. What year did you do your last breaking on it?

266 A. My last breaking on it was in 1871.

Q. 1871?

A. Yes, sir, the last breaking I done was in 1871. That is the last breaking I done.

Plaintiff rests in rebuttal.

Anna Erichsrub, recalled on the part of the defendants in surrebuttal, testifies as follows:

Examined

By Mr. Dunn:

Q. Did you hear Mr. Donovan's testimony given just now?

A. Yes.

Q. Does that refresh your memory now about this conversation?

A. Well, Mr. Donovan wrote me a letter about the land; and then I wrote him about it a letter back again. He came—

Q. Have you the letter he wrote you?

A. No, he wrote two letters, he wrote two letters.

Q. Do you know where they are?

A. No, sir, I don't. I didn't think they were of any importance.

Q. Are they in existence?

A. No, sir, I don't think they are.

Q. You think they are destroyed? A. Yes.

Q. Can you tell us what the contents of his letters were that he wrote to you?

A. He wanted to buy the land and give a quit-claim.

267 I didn't know a quit claim from any other ordinary deed. So I wanted to see Mr. Brown so as to ask him about this quit claim.

Q. Did Mr. Donovan then come to see you?

A. Then Mr. Donovan came to see me.

Q. He came to see you? A. Yes, sir.

Q. You wrote him a letter after he wrote?

A. Yes, sir, Mr. Donovan wrote me a letter first about the land.

Q. Then you wrote to him?

A. Yes, sir, I told him I didn't know about the deed.

Q. Did you tell him as he testifies, in your letter that you would give him the first chance for the land?

A. I told him if he would pay me what I wanted for it he could have it.

Q. Something of that kind?

A. Something of that kind; the same as anyone else.

Q. But you are positive you didn't write to him until he wrote to you? A. He wrote to me.

Q. First? A. Yes, sir.

Q. You are positive of that?

A. I am quite positive of that.

Q. Did you know Mr. Donovan at that time? A. No.

Q. You never did know Mr. Donovan until that time?

A. No, I never knew him.

Q. Did he come to see you?

A. Yes, sir, he came to see me.

Q. You heard his testimony about talking about a law suit; did he talk about a law suit to you when he was there?

A. I don't know. I didn't know anything about a
268 law suit. I didn't know there was one at the time.

Q. Did he tell you at that time about having a law suit about that land, and if he got beat or anything of that kind? A. No, sir, I don't remember anything about that.

Q. You heard what he testified to about that? A. Yes, sir.

Q. Did he tell you anything about that?

A. No, sir, I don't know what he told me about a law suit. I don't know he told me anything about that law suit.

Q. Or about any law suit? A. No.

Mr. Dunn: Mr. Reporter, will you read the testimony of Mr. Donovan that he gave a short time ago upon this matter?

The testimony of Mr. Donovan, as found on pages 259 and 260, beginning at the last answer on page 259 is now read by the reporter.

Q. Did you tell him that, what the reporter has just read, did you say that? A. No, sir, I did not.

Q. Mr. Donovan testifies as follows: "I went to the house and says to her 'You wrote me a letter,' and she says, "Yes," she said 'You are an old man, and I want you to have that land and give you a chance for to buy it.'" What do you say to that, did you say that to him? A. No, sir I did not.

Q. Did he say in answer to that, "Mrs. Erichsrud, I couldn't buy my own homestead, you know it is in dispute."

A. No, sir, I am positive he didn't say that, because I would have remembered it, because—

Q. You are positive he didn't say that? A. Yes, sir.

Mr. Gilman: She didn't say that?

269 Mr. Dunn: Yes she did.

Mr. Gilman: She answered your question, but she says she didn't recollect.

Mr. Dunn: No, she said she would have remembered it.

The last answer of the witness is read over by the reporter as follows: "No, sir, I am positive he didn't say that, because I would have remembered it, because—

Witness. I didn't know that the land was in dispute.

Q. Did he say that, or did he not say it?

A. I wouldn't say positively; but I am quite sure he never said it, because I would have known then that the land was in dispute, and I didn't know it. You told me here they disputed that for ten years. I didn't know anything about it until the papers came.

Q. Did you say "If you buy the land, if you beat the company, you will get the money back"?

A. No, I didn't know anything about it, I didn't know anything about that business. That I would get the money back and pay him.

Q. Did you tell him anything about that?

A. No, sir, I didn't because I didn't know anything about this. I didn't know it was in dispute at all. I shouldn't have sold it if I had.

Q. Did he say "I don't want to buy it, but I tell you, if I am beat, if the court beats me may be, I would like to buy it if you have it to sell. Then if I was beat in court if she had not sold the land I would like to buy it." Did he say anything of that kind? A. No.

270 Q. Did he say "I have a lot in town, and we might make a trade if I was beat"? Did he say anything of that kind?

A. He wanted me to take a lot if he gave me so much money, in part.

Q. After having heard that testimony, Mrs. Erichsrud, are you still confident and positive that no such conversation occurred?

A. There was no such thing as that talked about, and as far as that part of it is concerned it never was, because, as I said before, I didn't know this was in court at all.

Q. He never informed you it was in court? A. No, sir.

Q. And you knew nothing about its being in court until you were served with the summons?

A. No, sir, that is the time.

Q. Or of any such claim? A. No such claim, no, sir.

Q. This was after you sold it that you got the summons?

A. Yes, sir.

Q. At that time you knew nothing about the law suit?

A. No, sir.

Q. At the time you sold it to Mr. Woodwick you knew nothing about this law suit? A. No, sir.

Q. Or about any claim at all? A. No, sir.

No cross-examination.

Mr. Dunn: I introduce in evidence a copy of the deedings and the judgment in the case of Michael Donovan against Thomas S. Thompson, brought in the District Court of the Sixth Judicial District, Faribault County. I have simply the
271 copies, they are not certified to.

Mr. Gilman: Have you got a copy of the answer and of the complaint?

Mr. Dunn: Yes.

Mr. Gillman: And the decision?

Mr. Dunn: Yes. The complaint, answer, reply and the judgment.

Mr. Gilman: I object to them on the ground that they are immaterial and irrelevant.

Mr. Dunn: You don't object to them upon the ground that they are not certified to?

Mr. Gilman: No. I have got a certified copy myself.

Said paper writing is now marked Defendants' Exhibit 6.

It is agreed between respective counsel that the documents marked Defendants' Exhibit "A", and papers attached thereto, being certain copies of papers from the General Land Office, may be introduced in evidence by counsel for Defendants, subject to the objection of counsel for complainant that the same are irrelevant and immaterial to any issue in the cause.

Testimony closed.

272 DEFENDANTS' EXHIBIT 1.

This Indenture, made this 24th day of May, in the year of our Lord one thousand eight hundred and ninety-nine, between Anna Erichsrud, surviving widow of O. C. Erichsrud, deceased, Addie J. Erichsrud, Julia P. Erichsrud and Mabel Erichsrud, children and only lawfull issue of said deceased, all unmarried, parties of the first part, and Louis K. Woodwick, all of Faribault Co., Minn., party of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of Two thousand ($2000.00) Dollars, to them in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey, to the said party of the second part, his heirs and assigns, Forever, all that tract or parcel of land lying and being in the County of Faribault and State of Minnesota, described as follows, to wit.

The East half of the Northwest quarter of Section Thirty-five "35" in Township one hundred and one "101" North, of Range Twenty-eight "28" West, containing 80 acres more or less.

(Two $1.00 revenue stamps.)

To Have and to Hold the Same, together with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, to the said party of the second part, his heirs and assigns, Forever. And the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant with the said party of the second part, his
273 heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances; and the above bargained and granted lands and premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will Warrant and Defend.

In Testimony whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written.

ANNA ERICHSRUD, [Seal]
ADDIE J. ERICHSRUD. [Seal]
MABELLE H. ERICHSRUD, [Seal]
JULIA P. ERICHSRUD, [Seal]

Signed, Sealed and Delivered in presence of;
J. N. Brown,
F. P. Brown.
Witnesses:

State of Minnesota,
County of Faribault—ss.

I, F. P. Brown, a Notary Public, within and for said County, do hereby certify that on this 24th day of May, A. D. 1899, personally came before me Anna Erichsrud, Addie J. Erichsrud, Julia P. Erichsrud and Mabel Erichsrud, to me well-known as the same persons described in and who executed the foregoing deed, and they each acknowledged that they executed the same freely and voluntarily.

[Notarial Seal] F. P. BROWN,
Notary Public.

274 Office of Register of Deeds,
County of Faribault, Minnesota.

I hereby certify that the within Deed was filed in this office for record on the 24th day of May, A. D. 1899, at 2 o'clock p. m., and was duly recorded in Book 27 of Deeds, page 390.

K. F. WOODARD,
Register of Deeds.

Taxes paid and transfer entered this 24 day of May, A. D. 1899.

G. B. FRANKLIN,
County Auditor.

275 DEFENDANTS' EXHIBIT 2.

Southern Minnesota Railway Co.,
To O. C. Erichsrud.

No. 112.

Warranty Deed.

This Indenture, made this Twentieth day of March in the year of our Lord one thousand eight hundred and Eighty-eight between the Southern Minnesota Railway Company, party of the first part, and O. C. Erichsrud, of Blue Earth City in the County of Faribault and State of Minnesota, party of the second part; Witnesseth, that the said party of the first part, for and in consideration of the sum of Four Hundred and Eighty Dollars, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released, aliened and conveyed, and by these presents doth grant, bargain, sell, remise, release, alien and convey forever, all that tract, piece or parcel of Land situate, lying and being in the County of Faribault, State of Minnesota, known and described as follows:

The East half of the Northwest Quarter of Section No. Thirty-five (35) in Township No. One hundred and One (101) North of Range No. Twenty-eight (28) West of 5th p. m., containing, according to the United States Survey Eighty Acres, more of less: Reserving and excepting therefrom, how-
276 ever, a strip of land extending through or into the same (or so much of such strip of land as may be within said described premises), of the width of one hundred feet; that is to say, fifty feet on each side of the center line of the Southern Minnesota Division of the Chicago, Milwaukee and St. Paul Railway or any of its branches, in case the said railway or any of its branches has been constructed on, or over, or within fifty feet of, any part of said described premises. Together with all and singular the hereditaments and appurtenances

thereunto belonging, or in any wise appertaining; and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy of, in and to the above bargained premises, as above described, and their hereditaments and appurtenances.

To have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the Southern Minnesota Railway Company for itself, its successors and assigns, doth covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that the above bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons, lawfully claiming the whole or any part thereof, it will forever warrant and defend except taxes for 1884 and subsequent years.

In Testimony Whereof, the said Southern Minnesota Railway Company hath caused these presents to be signed by its
277 President and attested by its Secretary, and its corporate seal to be hereunto affixed, the day and year first above written.

[Corporate Seal] SOUTHERN MINNESOTA,
RAILWAY COMPANY,
By Roswell Miller, President.

Attest: P. M. Myers, Secretary.

Signed, Sealed and Delivered in Presence of;
H. G. Haugan,
Peter S. Burghart.

State of Wisconsin,
County of Milwaukee—ss.

Be it known, that on the 20th day of March, A. D. 1888, before me, the undersigned a Notary Public, duly commissioned in and for said County, and duly authorized to administer oaths and take acknowledgment of deeds, came Roswell Miller, President, and P. M. Myers, Secretary of the Southern Minnesota Railway Company, who by me being duly sworn, did each depose and say: That they are respectively President and Secretary of the said Company; that they know the Seal of said Company; that the Seal affixed to the foregoing instrument is the Corporate Seal of said Company, and was affixed by authority of said Company, and that they signed their respective names thereto as President and Secre-
278 tary by the like authority; and they severally acknowledged the execution thereof to be their free act and

deed, and the free act of the said Southern Minnesota Railway Company, for the purposes therein expressed.

And I certify, that they are personally known to me to be the persons they are above described to be, and who executed this instrument.

And I further certify, that the foregoing instrument is executed according to the laws of Minnesota.

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal on the day and year above written.

[Notarial seal] WILLIAM S. MILLIGAN,
Notary Public.

No. 112.
Warranty Deed.
Southern Minnesota Railway Co.
To
O. C. Erichsrud.

State of Minnesota,
County of Minn.—ss.

I hereby certify that the within deed was filed in this office for record, on the 8th day of June, A. D. 1888, at 11-½ o'clock a. m., and duly recorded in Book 16 of Warranty Deeds,
279 on pages 395.

M. M. FREER,
Register of Deeds.

Taxes paid and transferred June 8, 1888.

N. WHITFIELD,
Co. Auditor.

280 DEFENDANTS' EXHIBIT 3.

1. Abstract of Title to the East half of the North West quarter of Section 35 in Township 101, Range 28, in Faribault County, Minn.

2. State of Minnesota
To
Southern Minnesota R. R. Co.
Certified List.
Dated December 24th, 1875.
Filed March 15th-1876 at 3, P. M. Certified to by State Auditor that said list has been compared with the official list on file in his office certified to the State by the Land Commissioner of the General Land Office and transmitted by the Interior Department of the General Government that the same is a correct list of the lands certified to said State and by said State conveyed to the Southern Minnesota R. R. Co by Deed dated August 8th, 1871, includes the land described in the caption hereof.

3. Southern Minnesota R. R. Co.
To
Samuel B. Ruggles and
Albon P. Man, Trustees.
Trust Deed.
Dated August 8th-1864.
Filed Aug. 28th-1867, at 11, A. M.
in Book I, of Mortg's page 245.
Consideration $1.00 Conveys all the lands acquired or which may be hereafter acquired by the party of the first part through or under any land grant or other act of the Congress of the United States or of the said State of Minnesota.

	Southern Minnesota R. R. Co.	1st-Mortgage.
4.	To	Dated Sept. 24th-1867.
	Samuel B. Ruggles and	Filed Aug. 25th-1868, at 3, P. M.
	Albon P. Man, Trustees.	in Book I of Mortg's page 552.

Consideration $1.00, Conveys all lands which may be hereafter acquired by the party of the first part, or to which it shall be entitled through or under any land grant or other act of the Congress of the United States or of the said State of Minnesota, for or in respect to the construction of said road to the extent of one hundred and fifty miles westward, from the present terminus of said completed road at Rushford, thirty miles from the Mississippi river.

	Southern Minnesota R. R. Co.	2nd-Mortgage.
5.	To	Dated Sept. 24th-1867.
	Samuel B. Ruggles and	Filed Aug. 25th-1868, at 3, P. M.
	Albon P. Man, Trustees.	in Book I, of Mortg's page 564.

Consideration $1.00 Conveys same as No. 4.

281

	Southern Minnesota R. R. Co.	Power and Covenants.
6.	To	Dated March 13th-1868.
	Samuel B. Ruggles and	Filed Sept. 19th-1872, at 8, A. M.
	Albon P. Man, Trustees.	In Book O, of Mortg's page 397.

Relating to Mortgage of August 8th-1864 and Special Trust in setting apart one hundred thousand acres of land to pay bonds to the amount of $450,000. The tenor and effect of the same are that the Trustees are allowed to convey without requiring the R. R. Co. joining in the conveyance.

	Southern Minnesota R. R. Co.	Power and Covenants.
7.	To	Dated March 13th-1868.
	Samuel B. Ruggles and	Filed Nov. 19th-1872, at 9, A. M.
	Albon P. Man, Trustees.	In Book O, of Mortg's page 539.

Description same as No. 6 next above.

	Southern Minnesota R. R. Co.	Decree.
	By United States Circuit Court	Dated May 27th-1874.
8.	To	Filed Dec. 11th-1884, at 9, A. M.
	Samuel B. Ruggles and	in Book 3, of Mortg's page 433.
	Albon P. Man, Trustees.	Order to sell the premises mentioned in

Mortgages dated September 24-1867, at public auction by or under the direction of John Y. Page one of the Masters of this court.

	Southern Minnesota R. R. Co.	Resignation and appointment.
	and Samuel B. Ruggles and	Dated March 22nd-1878.
	Albon P. Man, Trustees.	Filed Apr. 11th-1876, at 8, A. M.
9.	To	in Book T, of Mortgages page 10.
	Hermann H. Cammann.	Samuel B. Ruggles resigns and Her-

mann H. Cammann is appointed Trustee in Mortgages dated Sept. 24-1867.

	Southern Minnesota R. R. Co.	Modification of Decree.
	By U. S. Circuit Court	Dated Dec. 27th-1876.
10.	To	Filed Dec. 11th-1884, at 9, A. M.
	Albon P. Man and	in Book 3, of Mortg's page 443.
	Hermann H. Cammann.	Order modifying decree of May 27th-

1874 that is to say Plaintiffs may proceed to sell the Mortgaged premises described in said decree entire and as one parcel, under and by virtue of and to satisfy the second mortgage therein described.

282

	Southern Minnesota R. R. Co.	Report of Sale.
	By John Y. Page	Dated Feb 10th-1877.
	Master in Chancery	Filed Dec 11th-1884, at 9, A. M.
11.	To	in Book No. 3 of Mortg's page 445.
	Albon P. Man and	
	Hermann H. Cammann.	Conveys the premises mentioned in de-

cree of May 27th-1874 as modified by a further order of said Court dated Dec. 27th-1876, to satisfy the said second Mortgage.

Southern Minnesota R. R. Co. — Confirmation of Sale.
By U. S. Circuit Court. — Dated Feb. 16th-1877.
12. To — Filed Dec. 11th-1884, at 9, A. M.
Albon P. Man and — in Book No. 3 of Mortgages page 447.
Hermann H. Cammann. — Order confirming Master's report
of Sale.

Southern Minnesota R. R. Co. — Certificate of Mortgage Sale.
By John Y. Page — Dated Feb 14th-1877.
Master in Chancery — Filed Jan. 29th-1886, at 3, P. M.
13. To — in Book 12, of Deeds page 241.
Albon P. Man and
Hermann H. Cammann. — Consideration $1 00
Conveys all the remaining land and right title or interest in lands embraced in two mortgages now under foreclosure and still owned by said company or to which it is or may be in any way entitled, under the respective land grants, Acts of Congress and of the State of Minnesota, being all the lands and right to lands acquired or which may be acquired through or under any land grant act.

Albon P. Man and — Deed.
Hermann H. Cammann, Trustees. — Dated March 3rd-1877.
14. To — Filed Feb. 2nd-1886, at 9, A. M.
The Southern Minnesota Ry. Co. — in Book 12, of Deeds page 249.
Consideration $1.00. Conveys same as No. 13, to which reference is given for more complete description of said hereby granted premises.

Southern Minnesota Ry. Co. — Mortgage.
To — Dated January 1st-1879.
Albon P. Man and — Filed Feb. 3rd-1880, at 9, A. M.
Hermann H. Cammann and — in Book V of Mortg's page 518.
15. Farmers' Loan and Trust Co. — Consideration $1 00 &
Conveys all lands owned by said Company.

283

Farmers Loan and Trust Co. — Satisfaction of Mortgage.
and Albon P. Man, and — Dated April 27th-1880.
Hermann H. Cammann. — Filed July 27th-1880, at 21/2 P. M.
16. To — in Book X of Mortgages page 73.
Southern Minnesota Ry. Co. — Discharges Mortgage dated
January 1st-1879.

Albon P. Man and — Satisfaction of Mortgage.
Hermann H. Cammann, Trustees. — Dated July 26th-1881.
17. To — Filed Sept. 15th-1881, at 2, P. M.
Southern Minnesota R. R. Co. — in Book X of Mortg's page 358.
Discharges First Mortgage dated September 24th-1867.

Southern Minnesota R. R. Co. — Appointment.
and Albon P. Man, Trustee. — Dated Oct. 20th-1881.
18. To — Filed Jan. 19th-1882 at 2, P. M.
Peter M. Myers — in Book X, of Mortgages page 473.
Peter M. Myers is appointed Trustee in place of Samuel B. Ruggles, deceased, in Mortgage dated August 8th-1864.

Albon P. Man — Resignation.
19. To — Dated October 21st-1881.
Peter M. Myers — Filed Jan. 19th-1882, at 2, P. M.
in Book X of Mortgages page 474. — Albon P. Man resigns as trustee in
Mortgage dated August 8th-1864

Southern Minnesota R. R. Co. — Appointment.
and P. M. Myers, Trustee, — Dated October 22nd-1881.
20. To — Filed January 19th-1882, at 2, P. M.
John Johnston — in Book X of Mortgages page 476.
John Johnston is appointed Trustee in place of Albon P. Man resigned in Mortgage dated August 8th-1864.

P. M. Myers and J hn Johnston, Trustees.
21. To
Southern Minnesota R. R. Co.
Satisfaction of Mortgage.
Dated Aug. 23rd-1886.
Filed Aug. 28th-1886, at 4, P. M.
in Book 5 of Mortg's page 577.
Discharges Trust Deed or Mortgage of August 8th-1864.

284

Southern Minnesota Railway Co. by Roswell Miller, Pres., and P. M. Myers, Sec'y.
22. To
O. C. Erichsrud.
Kind of Instrument. Deed.
Dated March 20th, 1888.
Filed June 8th, 1888, at 11-1/2 A. M.
Recorded in Book "16" of Deeds page 395
Consideration $480.00
Description. Conveys same as in the caption hereof.

Ole C. Erichsrud, deceased, by Probate Court of Faribault Co. Minn.
23. To
Anna Erichsrud, Ada J. Erichsrud, Julia P. Erichsrud, and Mabel H. Erichsrud
Kind of Instrument. Final Decree.
Dated Novem er 7th, 1888.
Filed May 24th, 1899, at 2:30 P. M.
Recorded in Book "33" of Deeds page 542
Consideration $.....
Description: To Anna Erichsrud, surviving widow undivided 1/3 and to Ada J. Erichsrud, Julia P. Erichsrud and Mabel H. Erichsrud the remaining 2/3 of same as in the caption.

Anna Erichsrud "widow" and Ada J. Erichsrud, Mabelle H. Erichsrud and Julia P. Erichsrud, all unmarried.
24. To
Louis K. Woodwick.
Kind of Instrument. Warranty Deed
Dated May 24th-1899.
Filed May 24th-1899 at 2, P. M.
Recorded in Book "27" of Deeds.
Page 390.
Consideration $2000.00

Description: Conveys same as in the caption hereof. Rev. $2.00

25. Taxes paid.

26. Judgments none.

State of Minnesota,
County of Faribault—ss.

This certifies the foregoing statement from No. 1 to 26 inclusive to be a correct Abstract of title to the land described in the caption thereof as the same appears of record in the Office of the Register of Deeds of Faribault County, Minn. Including taxes and judgments.

Witness my hand this 28th day of August, 1899, at 1 p. m.

M. M. FREER,
Abstractor.

(10c. Revenue Stamp.)

285 DEFENDANTS' EXHIBIT 4.

This Agreement, made this 15th day of April, A. D. 1899, by and between Sam Carlyle, party of the first part, and Mrs. Anna Erichsrud, owner of the real estate hereinafter described, party of the second part:

Witnesseth: That the party of the first part hereby agrees to and with the party of the second part, for the consideration hereinafter named, to well and faithfully till and farm, during the season of farming in the year 1899 in a good and

husband like maner, and according to the usual course of husbandry, the following described premises and real estate, situate in the County of Faribault and State of Minnesota, viz.:

The East half (½) of the N. W. (¼) Sec. 35—101—28. And the said party of the first part hereby further agrees to sow and plant the said land, in such crops as the party of the second part shall direct, to wit: oats and wheat.

The party of the first part also agrees to furnish at his own cost and expense all proper and convenient tools, teams, utensils and farm implements and machinery (except as hereinafter otherwise provided) to carry on and cultivate said farm during said season, and to furnish and provide all proper assistants and hired help in and about the cultivation and management of said farm, and to farm and cultivate the said lands to the best advantage and according to his best skill and judgment, and maintain and keep up the fences so as to protect said crops from injury and waste, and to watch, care for, and protect the same, and protect the fruit and shade trees
286 thereon, and to cut no green trees, and commit no waste or damage on said real estate, and to suffer none to be done, and to crop and cultivate said lands and harvest and secure the crops in the best possible manner and in farmer like style during said season, and after taking off the crop to plow immediately in good and proper manner so much and such parts of said farm suitable, for a succeeding crop as shall be plowed at the time the party of the first part shall take possession thereof to till and crop; and to keep up and maintain in good repair all structures, cribs, fences, bridges, ditches and improvements on said farm, and generally do and perform all proper and ordinary work, labor, care and skill, requisite, usual or necessary, to farm and crop said premises in a proper manner and style, and to the best interest of the party of the second part, and further agrees not to remove any manure from said farm, and not to sell or remove, or suffer to be sold or removed, any of the produce of said farm or premises, of any kind, character or description, until the division thereof, without the written consent of the party of the second part.

Lessor is to furnish all seed for said land and to pay the one-half of machine price for threshing.

Carlyle is to work without charges all road tax.

(25c revenue stamp.)

In consideration of the faithful and diligent performance of the foregoing stipulations by the party of the first part, the party of the second part agrees, upon reasonable request thereafter made, to give and deliver on said farm, the
287 equal one-half (½) of all grains, vegetables, hay, so raised and secured upon said farm during said season.

Carlyle to deliver Erichsrud share of wheat and oats at elevator at Elmore. Hay to be stacked on farm by Carlyle and divided in stack.

SAMUEL CARLILE,
ANNA ERICHSRUD.

Louis K. Woodwick, having purchased the within described real estate, and as part of said purchase, and in consideration thereof, I do hereby assign, transfer and set over to him all my right title and interest in and to the within contract.

Dated at Blue Earth this 24th day of May, 1899.

ANNA ERICHSRUD.

(25c revenue stamp.)

288 DEFENDANTS' EXHIBIT 5.

Final Decree.

State of Minnesota,
County of Faribault.

In Probate Court,

Special Term, November 7th, 1888.

In the Matter of the Estate of Ole C. Erichsrud, Deceased.

It appearing to the Court now here, on satisfactory proofs and evidence, that the funeral charges, expenses of last sickness of said deceased, and the costs of administration of said estate, have been fully paid, and that all the debts existing against said deceased, as allowed by the Court pursuant to law, have also been fully paid and satisfied, or moneys reserved to provide for the same, and that said estate has been full administered, as by the final account of Peter Hagen and Fred P. Brown, administrators of said estate, duly audited and allowed by this Court, pursuant to due notice given and served, will appear, reference being had thereto.

And it further appearing, that due notice of the application for this final decree in said matter, assigning the estate to the persons thereto entitled by law, has likewise been duly given and served pursuant to the law in such case made and provided and decided.

And it further appearing, that the said deceased died
289 intestate, and the residue of said estate consists of the following described real estate, to wit:

Lots Six and Seven (6 & 7) in Block Nine (9) and Lots Four and Five (4 & 5) in Block Fourteen (14) all in Garretson's Addition to Blue Earth City, Faribault County, Minn. as said Lots and blocks are designated upon the Recorded Plat of said Addition.

Also the East half of the Northwest quarter of Section Thirty-five (35) in town one hundred and one (101) of Range Twenty-eight (28) West.

Also certain personal estate assigned by a separate order or Final Decree of even date herewith.

And it appearing that no part of said Real Estate was the Homestead of deceased and that said deceased was not the owner of any Homestead.

And it further appearing, that the following named persons are the persons entitled to said estate by law, viz: Anna Erichsrud, surviving widow of Deceased and Addie J. Erichsrud, Julia P. Erichsrud and Mabel H. Erichsrud, children and only lawful issue of said Ole C. Erichsrud, deceased.

Now, therefore, on the petition of the Administrators of said estate and pursuant to due notice and the law in such case provided:

It is ordered, adjudged and decreed, and this Court, by virtue of the powers and authority vested in the same by law, doth hereby order, adjudge and decree: That all and
290 singular of the above described real property be, and the same is hereby assigned to and vested in the above named persons forever, in the following proportions, to wit: To said Anna Erichsrud, surviving widow of deceased One undivided one third in fee simple of all the said real estate, and

To said Addie J. Erichsrud, Julia P. Erichsrud and Mabel H. Erichsrud, children of deceased, the remaining undivided two-thirds, in fee simple of all said Real Estate in equal shares and interests.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said above named persons, and their heirs and assigns, forever.

[Seal] J. A. KIESTER,

Judge of Probate Court, Faribault County, Minn.

(10c Revenue Stamp.)

No. 34.

In Probate Court, County of Faribault.

In the Matter of the Estate of Ole C. Erichsrud, Deceased.

Final Decree Assigning Residue of Estate.

291 State of Minnesota,
County of Faribault—ss.

I, Josiah F. Winship, Judge of the Probate Court of said County, do hereby certify that I have compared the within Final Decree in the matter of said estate with the original Final Decree on file and of record in the Probate Office of the County aforesaid, and that the same is a true copy thereof, and of the whole of said original Final Decree and Record.

In Testimony Whereof, I have hereunto affixed the seal of the Probate Court of said County, and signed my name, this 24th day of May, A. D. 1899.

[Probate seal] JOSIAH F. WINSHIP,
Judge of Probate

Made, filed and recorded in Vol. E. page 21, Minutes of Court, this 7th day of Nov. 1888.

J. A. KIESTER,
Judge of Probate.

No. 7877.

Office of Register of Deeds,
Faribault Co., Minn.—ss.

I hereby certify that the within Instrument was filed in this office for record on the 24th day of May, A. D. 1899, at 2:30 o'clock p. m., and was duly Recorded in Book 33 of Deeds on pages 542-3-4.

K. F. WOODARD,
Register of Deeds.

292 DEFENDANTS' EXHIBIT 6.

Complaint.

State of Minnesota,
County of Faribault—ss.

District Court 6th Judicial District.

Michael Donavan,
vs.
Thomas S. Thompson.

This plaintiff for cause of action against this defendant alleges:

1st. That for many years he has been and now is settled upon the East Half (½) of the Northwest Quarter (¼) of Section

Thirty-five (35) in Township One Hundred and One (101) North of Range Twenty-eight (28) West in Faribault County, Minnesota; that settlement is not expressly or otherwise prohibited by Congress or any department of the general government; that said land is public land belonging to the United States; that the boundaries may be easily traced and the extent of plaintiff's claim easily known.

Plaintiff further alleges that he is an actual settler on said land or caused the same to be constantly occupied and has many and valuable improvements thereon, to wit: of the value of one hundred dollars, that he first settled upon said land in the year 1867 and has never abandoned the same for the period of Six months nor for any other period.

2nd. Plaintiff further alleges that in the Month of April 1885 this defendant unlawfully entered upon said prem-
293 ises and still unlawfully holds possession thereof and gives and claims that he has purchased the same to plaintiff's damage fifty dollars.

But plaintiff alleges that defendant has no right to or title in said premises and is not entitled to the possession thereof, but plaintiff has right to the possession thereof and the whole thereof.

Wherefore plaintiff demands judgment for the possession of said premises and of fifty dollars damages and for such other and further relief as may be just.

S. W. GRAHAM &
GEO. B. KINGSLEY,
Plff's Attorneys.

294 Answer.

Title of Case.

Now comes the above named defendant and for answer to the complaint herein, denies each and every allegation of said complaint except as the same hereinafter admitted qualified or explained.

This defendant expressly denies that the Plaintiff is now or ever was settled upon the Real Estate described in the Complaint; and denies that the Plaintiff is an actual settler on the said land or that he causes the same to be constantly occupied or that he has any valuable improvements thereon as alleged in said complaint or otherwise, and denies that the Plaintiff first settled upon said land in 1867 and has never abandoned the same as is in said complaint alleged or otherwise.

Defendant further alleges, that the land in the complaint described is not now and was not at the commencement of this action Public land belonging to the Government of the United States, as is alleged in the Complaint, and in that respect and behalf this defendant alleges the facts to be:

That heretofore to wit in pursuance and by authority of law the land in question was on the 21st day of March, A. D. 1871 duly certified by the Government of the United States, by the Commissioner of the General Land Office, to the State of Minnesota, and which said certificate was thereafter duly approved by the Secretary of the Interior of the United
295 States and on the 25th of March, A. D. 1871. And that the said land was thereafter and on the 8th day of August, A. D. 1871 by the State of Minnesota duly conveyed by deed of that date to the Southern Minnesota Railroad Company, a corporation duly organized and existing under the laws of the State of Minnesota.

That thereafter by conveyances duly made and by foreclosure of a Certain Mortgage covering the said land the same duly passed from the said Southern Minnesota Rail Road Company to the Southern Minnesota Railway Company, a corporation duly organized and existing under the laws of this State, that by subsequent conveyances to the said Southern Minnesota Rail Way Company and its Grantees, the said land became and was on the first day of October 1884 and now is the property of this defendant, with full and complete right to the possession thereof and of the whole thereof, that under and by virtue of his said conveyance and his right to the possession of said land, as aforesaid, this defendant has and did on the first of April, 1884 enter upon the said land and did take possession of the said land as his own property and not otherwise and that possession and entry is the only entry he has ever made on said land and is the same entry complained of by the Plaintiff herein.

III.

This defendant further answering herein alleges that in the month of April, A. D. 1885, the Plaintiff herein wrongfully and unlawfully entered upon the premises in the complaint described, and while the defendant was in the possession
296 thereof as alleged in the 2nd paragraph of this answer and then and there sowed upon about four (4) acres of the said land a mixture of foul and noxious seeds, which thereafter grew upon said land in the summer of 1885, and destroyed the crop of the defendant sowed thereon and which said foul and noxious seeds, have rendered the said four acres of ground unfit for cultivation and cropping until the same

shall be fully eradicated thereon, that said trespass and acts of the Plaintiff has damaged this defendant in the sum of Twenty-five Dollars.

IV.

Further answering defendant alleges, that during the spring and summer of 1885, the plaintiff wrongfully and unlawfully and wilfully permitted the stock, cattle and horses of the said defendant to enter upon and tread down eat and destroy the crops of the defendant growing and in shock after harvest, on the said land, to the damage of this defendant in the sum of Ten Dollars.

V.

Defendant further alleges that in the month of January, 1886, the Plaintiff herein wrongfully and unlawfully entered upon the premises in the Complaint described and took away and coverted to his own use the straw which had grown on the said land, and which was then and there stacked on the said land, and which had been so stacked and cared for by this defendant, and which was of the value of fifteen dollars, to the damage of the defendant of fifteen dollars.

VI.

297 Defendant further alleges that in or about the month of November, 1885, Plaintiff herein wrongfully and unlawfully entered upon the said land and with his teams, tools, servants and agents plowed up the soil of said premises, and at a time when it was unseasonable, and improper and in an improper manner, to the amount of six acres, to the damage of this defendant in the sum of fifty dollars. That during the said plowing the Plaintiff destroyed of certain flax seed which the defendant then had on said premises one bushel and a half of the value of one dollar and thirty-five cents, and to the damage of the defendant in the sum of One Dollar and thirty-five cents.

VII.

Defendant further alleges that in the month of September 1885 the said Plaintiff wilfully and maliciously entered upon the said premises and with himself his team, servants, agents and tools then and there cut down and carried away the grass then and there growing on said land, to wit: 15 tons of hay, of the value of Fifteen Dollars and to the damage of this defendant in the sum of Fifteen Dollars.

VIII.

Defendant further alleges that in the summer of 1885 the Plaintiff herein unlawfully entered upon the said premises and took and carried away and converted to his own use certain stone then and there being and part and parcel of the reality, to wit 1 cord of stone of the value of Ten Dollars, and to this defendant damage Ten Dollars.

298 IX.

Defendant further alleges that each and every of the foregoing acts of trespass committed by the plaintiff have been so done and committed wilfully and maliciously by the Plaintiff and with full knowledge by the Plaintiff of the rights and claims of this defendant—and with intent on the part of the Plaintiff to destroy and damage this Defendant, and to deprive him of the full or any use or benefit of his said premises, being the land in Complaint described—

Defendant therefor- alleges that he has been damaged by the said several acts of trespass or as aforesaid committed by the Plaintiff in the sum of Three Hundred Dollars—

Defendant therefor- Prays judgment that the said Plaintiff take nothing by this action, and that this Defendant have judgment enjoining and restraining the Plaintiff from further entering upon or trespassing upon the said premises, and that he have judgment against the plaintiff for the sum of Three Hundred Dollars damages and the costs of this action and for such other relief as may be just.

ANDREW C. DUNN,
Atty. for Defendant.

299 Reply.

Title of case.

The Plaintiff for reply to the new matter set up in defendants answer by way of Counter Claim or otherwise denies each and every allegation thereof except as herein after admitted to be true or qualified. He admits that he sowed about three acres of said land in spring of 1885 as he had a right to do in oats, the seed therefor being clean and free of foul or noxious seeds and that this defendant wrongfully and unlawfully harvested said Crop to the great damage of this Plaintiff to wit: Ten Dollars.

He denies that said land was damaged in any amount by reason of the sowing of said Crop of oats.

He denies that he during the summer of 1885 permitted his cattle or horses to destroy the Crops of this defendant thereon.

He denies that he ever entered upon said land to remove or to take any straw belonging to this defendant.

He admits that in the month of October 1885 he plowed in a good and workmanlike manner about Six acres of said land but did no damage thereto nor to any flax seed thereon.

He admits that in the month of September 1885 he cut about seven tons of hay thereon as he had a right to do, and no more, worth no more than two dollars.

He admits that removed five or six stones from the meadow ground to the benefit of the said premises and defend-
300 ants damage in any sum whatever.

He further denies that defendant by reason of the several acts set forth in his answer has been damaged in the sum of $300.00 or any sum whatever.

He further alleges that if said land was ever certified by the Government of the United States or said Railroad Company it was wrongfully and without authority of Law so Certified.

S. W. GRAHAM and G. B. KINGSLEY.
Plffs Attys.

301 Judgment.

Title of Case.

This action being at issue came on for trial and was duly tried by the Court without a jury at the June 1886 term of this Court held at Blue Earth City in the County of Faribault. The said Court having duly made and filed its decision in writing whereby it is found that the Plaintiff has no cause of action herein and that the Plaintiff is not entitled to recover herein and that the Southern Minnesota Railway Company is the legal owner of the lands described in the Complaint herein and the defendant herein is the equitable owner thereof and the whole thereof and is entitled to the possession thereof—and that judgment be entered accordingly. Now on motion of Andrew C. Dunn the attorney for the defendant herein it is ordered and adjudged that the Plaintiff is not entitled to recover in this action and is not entitled to the possession of the premises described in the Complaint to wit: the East Half (½) of the North West Quarter (¼) of Section thirty-five (35) in Township No. one hundred and one (10-) of Range No. twenty-eight (28) West, and lying and being in the County of Faribault and State of Minnesota—and that the defendant Thomas S. Thompson is entitled to the possession of said land and of the whole thereof.

And it is further ordered and adjudged that the De-
302 fendant Thomas S. Thompson do have and recover of the Plaintiff herein Michael Donavan the Sum of Twenty-Seven and 10/100 Dollars as and for his costs and disbursements in this action.

Witness the Hon. M. J. Severance Judge of the District Court aforesaid at Blue Earth City this 4th day of January A. D. 1888.

SMITH T. BARNES,
Clerk.

303 Extract from 165, U. S., 465-6; United States v. Winona & St. Peter R. R. Co. et als.

* * * * * * * * *

That on, before and for a long time after the certification of the lands in question to the State on account of the railroad grants it was uniformly held and ruled by the Secretary of the Interior and the other officers of the land department of the United States; (a) That the line of a railroad became and was definitely fixed so as to attach the grant to the odd numbered sections within the granted limits as soon as surveyed, staked out and marked on the face of the earth; and (b) that a homestead entry in all respects regular and legal excepted the land covered thereby from the operation of a railroad grant attaching during the existence of such entry; that the validity of a homestead entry was open to question by the company, and if it was shown that such entry was fraudulent or irregular in its inception, or that it had been abandoned before the right of the road attached, it was held not to except the land from the grant; but the burden of so doing was upon the company, and, in the absence of such proof, the entry being valid upon its face, was held to except the land from the grant, even though subsequently abandoned; and (c) That a preemption claim which may have existed to a tract of land at the time of
the attachment of a railroad grant, if subsequently
304 abandoned, and not consummated even though in all respects legal and bona fide was held not to operate to defeat the grant, but upon the failure of such claim the land covered thereby was held to inure to the grant as of the date when such grant became effective; and (d) That the rights under the grant attached to the lands in the granted and indemnity limits as of the same date, and that selection was not deemed necessary to attach the grant to any specific tract within the indemnity limits; and (e) That the lands within the indemnity limits were withdrawn at the same time as those within the primary or granted limits; * * * * and (g) That in pursuance of and in accordance with the aforesaid rules, the

grants to and for each and all of the land-grants railroad companies in the State of Minnesota were, before, at and for a long time after the certification of the lands in question administered."

303a DEFENDANTS' EXHIBIT "A".

C. H. B.
W. J. D.
St. J.
I. W. L.

F. ..... Department of the Interior
.....General Land Office,
.....January 1886.
..... I, Wm. A. I. Sparks, Commissioner of the General Land Office do hereby certify that the annexed papers are abstracts from tract books and copies of other papers and records on file in this office relating to the East Half of the Northwest quarter of section thirty-five (35) in township one hundred and one (101), of range twenty-eight (28), North of base line and West of the Fifth (5th) Principal Meridian, in former Jackson, now Worthington Land District, in the State of Minnesota, and that each of said papers—marked respectively 1, 2, 3, 4, and 5,—is a true and literal exemplification of the original to which it relates, viz:

1. Abstract from tract book relating to the section described, showing each entry, selection or filing appearing thereon.

2. List of selections, embracing parts of said section, presented by the Southern Minnesota Railroad Company Sept. 21, 1870.

3. List of lands certified to the State of Minnesota for the benefit of the Southern Minnesota Railroad Company March 25, 1871, so far as it relates to parts of said section.

304 4. Copy of diagram showing the ten and twenty-mile limits of the Southern Minnesota Railroad through ranges twenty-three to twenty-eight, inclusive.

5. Copy of homestead affidavit and application of Michael Donovan with register and receiver's rejection endorsed thereon..

In testimony whereof, I have hereunto subscribed by name, and caused the Seal of this office to be affixed, at the City of Washington, on the day and year above written.

[United States General Land Office Seal.]

WM. A. I. SPARKS,
Commissioner of General Land Office.

Examined
C. H. B.
A. B. J. F.

TOWNSHIP No. 101 N. — Range No. 28 W. 5 P.

1.	DESCRIPTION OF TRACT. Part of Section.	Section.	Township.	Range.	Contents. Acres.	100ths.	Rate per Acre. Dollars.	Cents.	Purchase Money. Dollars.	Cents.	Name of the Purchaser.	Date of Sale.	Number and C... P...
"Home"	N. E. ¼	35	101	28	160		1	25	10	00	Smith M. Demeree	November 1, 1864	
	N. E. ¼	"	"	"	160				Selected by Southern Minn. R. Road Act July 4 & 13, 186...				
"Home"		"	"	"	160		1	25	10	00	J. M. Matthews	December 2, 1864	
"Home"		"	"	"	160		1	25	10	00	Luman Barkley	June 21, 1866	
"Home"	S. E. ¼	"	"	"	160		1	25	10	00	John Dawley	November 7, 1864	
	N. W. ¼ & S. ½	"	"	"	480				Selected under Act July 4, 1866 for		S. M. R. R. App'd		Mc...
"Home"	S. W. ¼	"	"	"	160		1	25	10	00	Willard C. Brown.	December 2, 1864	

TOWNSHIP No. 101 N. Range No. 28 W. 5 P. M., District of Worthington, Minnesota.

OF TRACT.			Contents.		Rate per Acre.		Purchase Money.		Name of the Purchaser.	Date of Sale.	Number of Receipt and Certificate of Purchase.	TO WHOM PATENTED.
on.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.				
	101	28	160		1	25	10	00	Smith M. Demeree	November 1, 1864	2420	Final H. Cert. No. 1946, Aug. 11, 1871.
	"	"	160				Selected by Southern Minn. R. Road Act July 4 & 13, 1866					Approved Nov. 14, 1868.
	"	"	160		1	25	10	00	J. M. Matthews	December 2, 1864	2507	Canceled--Lee to R. and R. Dec. 5, 1868.
	"	"	160		1	25	10	00	Luman Barkley	June 21, 1866		Canceled--Lee to R. and R. Jan. 14, 1868.
	"	"	160		1	25	10	00	John Dawley	November 7, 1864	2489	Canceled June 21/69.
	"	"	480				Selected under Act July 4, 1866 for		S. M. R. R. App'd	Mch. 25, 1871,		List No. 2.
	"	"	160		1	25	10	00	Willard C. Brown.	December 2, 1864	2509	Canceled June 21/69.

308 Examined
C. H. B.
I. V. C.

2.

State of Minnesota
United States Land Office.

Jackson Sep. 21st, 1870.

The Southern Minnesota Railroad Company under and by virtue of an Act of Congress entitled "An Act making a grant of lands to the State of Minnesota in alternate sections, to aid in the construction of a Railroad in that State approved July 4, 1866," and under and in pusuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands, claimed by the said Company as enuring to the State of Minnesota for their benefit, and to which said State is entitled as "Indemnity Lands" under and by virtue of grants and provisions of said Act of Congress, and the location of the line of the route of part of the road of said Company and for the completed portion of said road, being the third section of ten miles of the same.

Parts of Sections.	Section.	Town.	Range.	Acres.
N. W. ¼ & S. ½.	35	101	28	480

I, T. C. Hoge, do solemnly affirm that I am the Land Agent of the Southern Minnesota Railroad Company; that the foregoing list of lands which I hereby select, is a correct list of a
309 portion of the public lands, claimed by the said Southern Minnesota Railroad Company as enuring to said Company, to aid in the construction of the Southern Minnesota Railroad from Houston, in the County of Houston and State of Minnesota, through the Counties of Fillmore, Mower, Freeborn, and Faribault, to the Western boundary of the State; for which a grant of lands was made by Act of Congress, approved July 4, 1866; that the said lands are vacant, unappropriated and are not interdicted Mineral nor Reserved Lands, and are of the character contemplated by the grant, being within the limit of 20 miles on each side of the line of route of said road, and being for the third section thereof from Houston aforesaid, ending at Lanesboro in the County of Fillmore in said State.

T. C. HOGE.

U. S. Land Office,
Jackson, Minn., Nov'b. 29/70.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Minnesota Railroad Company, under the grant to the said Company by Acts of Congress, approved July 4th, 1866, and selected by T. C. Hoge, the duly authorized Agent, and we have

tested the accuracy of said list, by the Plats and Records of this Office, and that we find the same to be correct, and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed
310 Public Lands of the United States and within the limit of twenty miles on each side and that the same are not, nor is any part thereof returned and denominated as Mineral Land or Lands, nor claimed as Swamp Lands, nor is there any Homestead, Preemption, State or valid claim to any portion of said lands, on file or record in this Office.

We further certify that the foregoing list shows an assessment of the Fees payable to us, allowed by the Act of Congress approved July 1st, 1864, and contemplated by the circular of instructions dated January 24/67, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Office, and that the said Company have paid to the undersigned, the Receiv r, the full sum of Two Hundred and two ($202) Dollars in full payment and discharge of said Fees.

E. P. FREEMAN, "Register,"
J. B. WAKEFIELD, "Receiver."

311 Examined 3.
C. H. B.
A. B. J. F.

No. 9.

Southern Minnesota Railroad.
Acts of July 4th and 13th, 1866.
Twenty Mile Limits.

List of lands in the district of lands subject to sale at the land office at Jackson, Minnesota, granted to said State by Acts of Congress approved July 4th and 13th, 1866, outside of the Ten and within the Twenty mile limits in lieu of the lands in the alternate sections, designated by odd numbers for Ten sections in width which the United States had sold or to which the right of pre-emption had not attached when the line or route of said road was definitely fixed.

312 North of base line and West of Fifth Principal Meridian.

Southern Minnesota.
Railroad List.

Twenty Mile Indemnity limits. Jackson Dist. Minn.

Parts of Section.	Section.	Township.	Range.	Acres.	Remarks.
N. W. ¼ & S. ½	35	101	28	480	

313 Examined
C. H. B.
A. B. J. F.

Department of the Interior,
General Land Office,

March 21st, 1871.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the foregoing on pages one to five inclusive is a true and correct list of the tracts of land selected by the agent of the State of Minnesota, outside of the Ten and within the Twenty mile limits, under the Act of Congress approved July 4th, 1866, entitled, "An act making an additional grant of lands to the State of Minnesota in alternate sections to aid in the construction of Railroads in said State," and the Act approved July 13th, 1866, entitled, "An Act relating to lands granted to the State of Minnesota to aid in constructing Railroads" the said selections being from the lands of the United States in the alternate sections designated by odd numbers outside of Ten and within Twenty miles of the line of Railroad running from Houston in the County of Houston, through the Counties Filmore, Mower, Freeborn and Faribault, to the Western boundary of the State; and being in lieu of the lands in the alternate sections designated by odd numbers within said Ten miles limits lying along the line of Ten miles of said road completed from the said town of Houston to Rushford, and which the United States had legally sold or granted, or to which the right of pre-emption or Homestead Entry had not legally attached prior to the period at which the right
314 of the State inured under said grant; and they are now submitted for the approval of the Secretary of the Interior in accordance with the requirements of said Acts of July 4th and 13th, 1866, subject to all their conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed,
[Seal] at the City of Washington on the day and year first herein above written.

WILLIS DRUMMOND, Commissioner.
Department of the Interior.

Washington City, D. C., March 25th, 1871.

Approved: Subject to the conditions and rights above mentioned.

C. DELANO,
Secretary.

315 Here follows a certain sectional map defining parts of Ranges 23 to 28 and Townships 100 to 107, purport-

ing to show the line of the Southern Minnesota Railroad through certain of said townships and ranges and defining the Ten and Twenty mile limits from said railroad.

316 Examined
C. H. B.
I. V. C.

5.

Affidavit.

Additional Homestead.
Act of March 3, 1879.

Land Office at .....
....., 188..

I, Michael Donovan, of Faribault Co., Minn. having filed my application No. ..... for an entry under the act of March 3, 1879 do solemnly swear that I am the head of a family and a citizen of the United States that I now reside on the tract applied for and have cultivated the same for 12 years last past as additional to my Final Entry No. 3568 for E. ½ S. W. 26—101—28—that I did not serve for a period of ninety days or more in the Army or Navy of the United States during the war of the rebellion and receive an honorable discharge therefrom; that said application No. ..... is made for my exclusive benefit; and that said entry is made for the purpose of actual settlement and cultivation as an addition to my homestead No. 3568, and not, directly or indirectly, for the use or benefit of any other person or persons whomsoever, and that I have not heretofore had the benefit of said act, except homestead No. 3568, that this affidavit is made before a Clerk of Court by reason of great distance from land office at Worthington, Minn.

MICHAEL DONOVAN.

Sworn to and subscribed this 26th day of June, 1883, before
[Seal]
H. J. NEAL,
Clerk District Court,
Faribault Co., Minn.

317 Examined
C. H. B.
I. V. C.

Application
No. .....

Homestead

Land Office at .....
....., 187..

I, Michael Donovan, of Faribault Co., Minn., do hereby apply to enter, under the provisions of the Act of Congress approved March 3d 1879, entitled "An Act to secure Homesteads to actual settlers on the public domain," the E. ½ N. W. ¼ of Section 35,

in Township 101 of Range 28, containing ..... acres, as additional to my Final Entry No. 3568 for the E. ½ S. W. ¼ of Sec. 26, 101, 28.

MICHAEL DONOVAN.

Land Office at .....
....., 187...

I, ..., Register of the Land Office, do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under the Homestead Act of May 20, 1862, and that there is no prior, valid, adverse right to the same.

MONS GRINAGER,
Register.

318 No.

Homestead Application.
Michael Donovan.
Worthington, Minnesota.

E. ½ N. W. June 28, 1883.
Section 35, Township 101, Range 28.

This application was made and fees tendered and rejected for the reason that the land applied for was certified to the S. M. R. R. Co. Mar. 25, 1871.

Thirty days allowed for appeal.

MONS GRINAGER,
Register.

C. H. SMITH,
Receiver.

319 United States of America,
District of Minnesota—ss.

I, H. Harcourt Horn, being the duly appointed Special Examiner to take and return the testimony in the cause to which this certificate is attached, do hereby certify, that, pursuant to the consent, agreement and stipulation of the solicitors for the respective parties, I did appear at the several times and places stated in the foregoing record, and was attended by the solicitors for the respective parties at such times and places; that I then and there, and at each of the said times and places named did take down in shorthand, verbatim, in full, and correctly, the testimony and all the testimony of all the witnesses produced before me for examination, on either side, and all the proceedings therein. That at all such times and places, each of the several witnesses, before testifying, was by me duly cautioned and sworn, to tell the truth, the whole truth and nothing

but the truth, relative to the matters in controversy in this cause.

I further certify, that the typewritten record to which this certificate is attached, contains a full, correct and complete record or transcript of the shorthand notes, and of all of the same, so by me taken as aforesaid; further, that the Exhibits filed and returned with this record, are all of the original exhibits produced and received on the several hearings of this cause; save where copies of the same are filed; and that where such copies are filed, it was expressly agreed and stipulated between the solicitors for the respective parties, that such copies should be substituted on the record for the originals thereof, as fully and completely as if the originals were filed; and further, that said copies, both in the record and on file, are true, full, correct and compared copies of such originals.

I further certify, that it was expressly agreed and stipulated by and between the respective solicitors, that the reading and signing the depositions by the respective witnesses, should be and was waived, and that such depositions were to have and should have the same force and effect as if the same had been duly read and signed by the respective witnesses.

Witness my hand this 13th day of January A. D. 1902.

H. HARCOURT HORN,
Special Examiner.

320 Circuit Court of the United States for the District of Minnesota, Third Division.

The United States of America, Complainant.

vs.

Chicago, Milwaukee & St. Paul Railway Company, The Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thompson, O. C. Erichsrud, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson nee Erichsrud, Julia P. Remington nee Erichsrud, and Louis K. Woodwick, Defendants.

It is Hereby Stipulated and Agreed that typewritten copies of the following documents from the record in the above entitled action shall constitute the record in said action for the use of the Court upon the hearing of the same, subject, however, to all exceptions taken to the testimony or any part thereof and to the exhibits offered in evidence:

1. The original bill and amendments thereto.
2. The supplemental bill.
3. The answer of the defendant Railway Companies and the Replications thereto.
4. The answer of the defendant Donovan.

5. The answer of the defendants Erichsruds and Woodwick and Replications thereto.

6. The stipulated Facts and exhibits therein referred to.

7. The appointment of H. Harcourt Horn as Special Examiner to take testimony in said action.

8. Testimony taken on the part of the plaintiff of Adam H. Bullis, Michael Donovan, Bert Donovan, George D. Moore, Peter L. Weldon, John Carr, Henry Schilling, and on the part of the defendants the testimony of Frederick P. Brown, Annie Erichsrud, Mabelle Anderson, Wayne Silliman, Louis K. Woodwick, William E. C. Ross, Peter Hagan, and the plaintiff's and defendants' exhibits in the case.

M. D. PURDY & J. M. GILMAN,
Solicitors for Complainant.
BURTON HANSON, & W. H. NORRIS,
Solicitors for Defendant Ry Cos.
ANDREW C. DUNN,
Sol'r for other defts served except Donovan.

Indorsed: Stipulation as to contents of record. Filed Feby. 3rd, 1902. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

321 United States of America.
District of Minnesota.
Third Division.

I, Henry D. Lang, Clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writings, viz: Original bill of complaint and amendments thereto, Supplemental Bill, Answer of Railway Companies, and replications thereto, Answer of Donovan, Answer of Erichsruds and Woodwick, and Replications thereto: Stipulated Facts and exhibits therein referred to, Appointment of H. H. Horn, Special Examiner, Testimony of witnesses for complainant and defendant and exhibits thereto attached and stipulation as to contents of record, which are in my custody as such Clerk and that such copies are true copies of such originals and of the whole thereof in the cause therein named.

Witness my hand as clerk and the seal of said Court. Done at my office in St. Paul, this 7th day of February A. D. 1902.

(Seal of Court.) HENRY D. LANG, Clerk.

Indorsed: Complainants & Defendants Record. Filed February 7th 1902. Henry D. Lang, Clerk.

322 Circuit Court of the United States, District of Minnesota, Third Division.

United States of America
vs.
Chicago, Milwaukee & St. Paul Ry. Co., Michael Donovan et al.

Praecipe for Placing Cause on June, A. D. 1901, Calendar.

To the Clerk of Above Named Court:

Please place the above named case on the Calendar for the June, A. D. 1901 Term.

R. G. EVANS and
J. M. GILMAN,
Solicitors for Complainants.

Indorsed: Filed June 14th, 1901. Henry D. Lang, Clerk.

323 United States Circuit Court, District of Minnesota,

Chancery Rule Register.

1901 June 14.

United States of America
No. 774. vs. C. Equity.
Chicago, Milwaukee & St. Paul Railway Company, Michael Donovan, et al.

Pursuant to a praecipe this day filed, signed by the solicitors for the complainant, it is ordered that this cause, be and the same hereby is set down for hearing on the first day of the June, A. D. 1901 Term of said Court or as soon thereafter as counsel can be heard.

United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1901, Jany. 6th, 1902.

Monday Morning Court opened pursuant to adjournment.

Present, Hon. William Lochren, Judge. Hon. Milton D. Purdy, U. S. District Attorney. Hon. William H. Grimshaw, U. S. Marshal, By S. J. Picha, Deputy. Henry D. Lang, Clerk.

United States of America
No. 774. vs. C. Equity.
Chicago, Milwaukee & St. Paul Railway Company, Michael Donovan, et al.

Ordered that this cause be and the same hereby is continued until the next regular term of this Court at St. Paul, Minnesota.

* * * * * A true record. Attest: Henry D. Lang, Clerk.

324 United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1902, Feby. 10th, 1902.

Monday morning. Court opened pursuant to adjournment.

Present, Hon. William Lochren, Judge. Hon. Milton D. Purdy, U. S. District Attorney. Hon. William H. Grimshaw, U. S. Marshal. Henry D. Lang, Clerk.

United States of America
No. 774. vs. C. Equity.
Chicago, Milwaukee & St. Paul Railway Company, Michael Donovan, et al.

This cause being regularly called for hearing in its order on the calendar, the parties appear by their respective solicitors, M. D. Purdy, Esq., appearing on behalf of the complainant and F. W. Root, Esq., appearing on behalf of the defendants.

Whereupon, upon agreement and consent of the solicitors for the respective parties, it is by the Court ordered that this cause be and the same hereby is set down for hearing and argument at St. Paul, Minnesota, on Thursday the 27th day of February, A. D. 1902, at ten o'clock in the forenoon.

* * * * * A true record. Attest: Henry D. Lang, Clerk.

325 United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1902, Feby. 27th, 1902.

Thursday morning. Court opened pursuant to adjournment.

Present, Hon. William Lochren, Judge. Hon. Milton D. Purdy, U. S. District Attorney. By Fred. N. Dickson, Assistant. Hon. William H. Grimshaw, U. S. Marshal. Henry D. Lang, Clerk.

United States of America
No. 774. vs. C. Equity.
Chicago, Milwaukee & St. Paul Railway Company, Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thomson, O. C. Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick.

This cause being regularly called for trial in its order on the calendar the parties appear by their respective solicitors, J. M. Gilman, Esq., Special Assistant U. S. Attorney, and Fred

N. Dickson, Esq., Assistant U. S. District Attorney, appearing on behalf of the Complainant, and Andrew C. Dunn, Esq., appearing on behalf of the defendants Erichsrud and Woodwick and W. H. Norris ,Esq., appearing on behalf of the Chicago, Milwaukee & St. Paul Railway Company, and Southern Minnesota Railway Company, and the said cause coming on for final hearing upon the pleadings, final proofs and records.

J. M. Gilman, Esq., opens the cause to the Court and argues the same on behalf of the complainant.

And here the Court takes a recess until 1 o'clock P. M.

The Court resumes proceedings at 1 o'clock P. M.

Andrew C. Dunn, Esq., opens the cause to the Court and argues the same on behalf of the defendants Erichsruds and Woodwick.

W. H. Norris, Esq., argues said cause on behalf of the defendants Chicago, Milwaukee & St. Paul Railway Company, and Southern Minnesota Railway Company.

326 J. M. Gilman, Esq., replies and argues further on behalf of the Complainant.

After hearing the arguments and statements of the solicitors for the respective parties and being fully advised in the premises, after due consideration, the court renders an oral decision in favor of the defendants and against the complainants and directs the solicitors for the defendants to prepare a decree accordingly to be signed, filed and entered.

* * * * * A true record. Attest: Henry D. Lang, Clerk.

327 Circuit Court of the United States, District of Minnesota, Third Division.

The United States of America, Complainant,
vs. In Equity.
The Chicago, Milwaukee & St. Paul Railway Company, The Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thomson, Louis K. Woodwick, and the heirs of O. C. Erichsrud, deceased, Defendants.

This cause came on for hearing before Hon. William Lochren, Judge U. S. District Court for the District of Minnesota, at the Federal Building, St. Paul, Minnesota, on the 27th day of February, John M. Gilman, Esq., of Special Counsel and M. D. Purdy, Esq., U. S. District Attorney appeared for the complainant; W. H. Norris, Esq., appeared for the Railway Companies, and Andrew C. Dunn, Esq., for all the defendants ex-

cept Michael Donovan; and the Court after full argument of the cause by the respective counsel, rendered the following decision, orally.

This is a suit brought by the United States against several railway companies, Michael Donovan, the Erichsrud heirs, and Louis K. Woodwick, to recover a tract of land which is described in the pleadings as the East half of the Northwest quarter of Section 35, Township 101, North, Range 28 West, upon the ground that the land was improperly certified to the State of Minnesota and transferred by the State to the railway company, as a part of the indemnity lands of the land grant of July 4, 1866, made in aid of what afterwards became the Southern Minnesota Railroad, passing through some of the southern counties of the State of Minnesota; for the reason that prior to the passage of the Land Grant Act of July 4, 1866, a homestead claim was filed upon said land by one Luman Barkley, on June 21, 1866, which had not been cancelled and by the terms of the land grant the land was excepted from the grant.

328 It appears from the testimony, that afterwards, in 1867, Barkley having left the State and gone to Canada, and by letter stated his intention of abandoning this homestead, Michael Donovan seeking to make a homestead upon the public land, selected this same land, and applied at the local land office to enter the same, and was informed that he could not do so until after the validity of the previous entry by Barkley was determined; that he gave notice of contest at that time, and in August, 1867, the matter of the contest came on before the local land officers, and it was determined that the entry of Barkley had been abandoned and that it should be cancelled; that at that time Mr. Donovan sought to make an entry upon this land, but such entry was refused, for the reason that the determination at the land office would have to be reported to and upon by the General Land Office, and until that was done, the land remained as appropriated or segregated from the public domain, by reason of Barkley's entry, and that no entry could be made upon it, until the cancellation of that entry had been approved by the General Land Office, and its determination had been notified to the Local land office, and noted on its records.

It appears that Donovan thereupon left an application in blank, or without date, rather, but describing this land, with the register of the local land office, that his application might be filed when the notification came back that Berkley's entry had been vacated and set aside; and he paid the amount of money which was required in making such entries, the fees of

the office, to the amount of $15 as his testimony tends to show for that purpose; a sufficient amount, I apprehend.

It is claimed here by counsel for the complainant that thereby, upon the entry of Barkley being cancelled, this paper being in the hands of the officers of the local land office, that it was sufficient to operate as an entry on the part of Donovan, of this land as a homestead; that this undated application of Donovan left with the register of the land office would
329 become effective upon his receiving notice from Washington that the proofs had been received, and the entry of Barkley was vacated or cancelled.

Mr. Gillman: It would become effective when he applied to complete it by filling in the date, and offering to make the entry.

The Court: Is there any evidence that he ever did that

Mr. Gilman: His own testimony.

The Court: At what time?

Mr. Gilman: On the 6th of June, when he went there, and was told then that the land could not be entered by him.

The Court: That was on the 6th of June, 1868?

Mr. Gilman: Yes, sir.

The Court: I apprehend that the leaving of that undated paper, with directions to the register of the land office to file it upon being notified of the order from the General Land office approving the vacation of the previous entry, would not be an entry by Donovan, under the homestead law. That when he attempted to make that entry by leaving that paper there, the land was not subject to entry, for the reason that the previous entry was not cancelled, and under the rules of the land office, could not be subject to entry by any other person until the previous entry had been cancelled at Washington, and notice thereof had been received back at the local land office, and noted upon its records. Then the land would be open for entry by the first applicant that came up there; but the rules of the land Department would not admit of an application of this kind being left there ahead of the time, to be filed when the time came about.

I think that question was decided by the Circuit Court of Appeals of this Circuit, in the case of Germania Iron Company v. James, 89 Fed. 811. This was a case where there had been an attempt by a person to locate a homestead upon a tract of mineral land upon the Messaba Range, upon getting private notice by telegraph that a previous entry had been cancelled by the Secretary of the Interior. The local land officers
330 refused to receive the entry that was offered, they not having received notice from the General Land Office of

its actions, and they did not receive notice thereof until two or three days later, when they permitted entry of the land to be made by another person who happened to be the first person that came there after notice had been received by them and entered upon their records. The Secretary of the Interior held, upon a contest, that the one who first applied, upon receiving private notice by telegraph, was the earliest, and allowed his entry. The Circuit Court of Appeals reversed that decision of the Secretary, upon the ground that it was contrary to the established rule which was in force in the Land Department, to the effect that an entry remains good, and segregates the land from the public domain, not only until it is cancelled, but notification of that cancellation is received back by the local, land office, and entered upon its records.

Under that decision, I am inclined to think that Mr. Donovan's attempts to enter this tract as a homestead, by leaving a blank application with the register of the land office, at the time he did so, was futile.

It appears that he did apply to enter this land as a homestead in the following June, and after the action of the General Land Office directing the vacation of the previous entry had been noted on the records of the local land office. But, prior to that time there had been an order issued from the Secretary of the Interior withdrawing all land in odd sections, within the indemnity limits, as well as the place limits of this land grant, from public sale or from entry, until the rights of the railroad company were settled; until the railroad company had made its selections, and its rights were determined.

Now it is true that under the decision in the Dunmeyer case 113 U. S. 629, this particular eighty was accepted (ex) from the land grant, there being a valid entry existing at the time of the passage of the land grant Act; and probably, at
331 the present time, or at any time after the decision in the Dunmeyer case, it would be held that an order withdrawing the land in odd sections from sale or entry within those limits, would not apply to a tract in this condition, even after that previous entry had been abandoned; but, that having been excepted from the grant, it could never fall within it. But such was not the ruling of the General Land Office at the time when Mr. Donovan attempted to enter this tract in June, 1868. The holding then was, that although there was a valid pre-emption or homestead entry existing upon the land, still, if that was afterwards cancelled for any reason, or abandoned, then, upon such cancellation or abandonment,

the land would fall into the grant to the State of Minnesota in aid of the railroad, as it would have fallen had there been no entry existing at the time of the passage of the act, or at the time of the location of the road. And therefore, it was the understanding of the Land Department, including the local land officers, that a withdrawal of lands within these limits, so as to prevent new disputes until the railroad selections were made, would include lands of this kind, where there had been an entry existing at the time of the grant, which had been cancelled subsequently. That was the reason, evidently, which caused the register of the land office to refuse the offer of Mr. Donovan to make an entry which included this eighty in section 35, but advised him to make such entry to include a tract of land in section 26 alone, and that he made such entry according to that advice.

I do not think there is any doubt about the right of the United States to recover lands which have been mistakenly certified as belonging to a railroad Company's grant, and covered by it, when in fact, they are not covered by it. I do not think there is any doubt that this case comes under the Act of March 3, 1887; and I do not think that the fact that there was no notice served upon the Southern Minnesota Railroad Company, which was the corporation in whose interest this grant was originally made, will defeat this action.

332 It appears from the statement of counsel, in connection with the testimony, that that company is virtually out of existence, and that all its property and franchises passed by foreclosure and subsequent deed to the Southern Minnesota Railway Company, which, if it has any existence at all is probably existing as some ancillary company to the Chicago, Milwaukee & St. Paul Railway Company, and is virtually owned by that Company.

The right of the United States to recover its land cannot be defeated because of any of these reasons; but the principal question in the case, after all, is the validity of the title of the defendant Woodwick. It being admitted that these lands were conveyed by the Land Department by proper certification, to the State, (which had the effect of a conveyance by patent), and by the State to the railroad company, I think there is no doubt but that under the situation shown, such a conveyance passed the legal title. It is not void, but it may be voidable. A purchaser or a grantee may be held in a court of equity to hold the title as a trustee for some one who has a stronger equity. But the land when so certified was within the control of the Land Department, and its certification having the effect of a patent, was sufficient to convey the legal

title to the land to the State, for the purpose and for the uses of the grant. And the title having passed by the deed of the State to the railroad Company, I think there is no doubt but that the legal title went to the railroad company.

The serious question in this case is whether the present holder of the title from the railroad company is a bona fide purchaser, or whether any of his grantors were such. It appears from the testimony, as I understand it, that Woodwick paid about two thousand dollars for the land, and the only thing that is relied upon to question his bona fides is the fact that at some time Mr. Donovan has been in possession of this particular eighty; had cultivated certain portions of it, and has made certain claims to it. I think if the present holder of the title had made such inquiries as he could as to the rights that Mr. Donovan had in the premises, that he would not have found anything which would have
333 caused him to consider that Donovan had any valid claim to the land. He would have ascertained his legal contest with Thomson the proper grantee of the railroad Company, and that Thomson was successful in that contest, and adjudged to be the owner of the land; and, under the circumstances, as far as Mr. Donovan was concerned, I am inclined to think that it would be unreasonable to hold that the present holder should not give full credit to that decision, and after that time regard Mr. Donovan as having no valid claim to the land.

I think therefore, that the present holder is a bona fide holder, and that the bill should be dismissed. Ordered accordingly.

Dated Feby. 27, 1902.

Indorsed: Opinion, dismissing bill. Filed March 3rd, 1902. Henry D. Lang, Clerk.

334 United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1902, March 10th, 1902.

Monday morning. Court opened pursuant to adjournment.

Present, Hon. William Lochren, Judge. Hon. Milton D. Purdy, U. S. District Attorney. Hon. William H. Grimshaw, U. S. Marshal. Henry D. Lang, Clerk.

The United States of America
No. 774. vs. C. Equity.
Chicago, Milwaukee & St. Paul Railway Company, the Southern Minnesota Railway Company, Michael Donovan, Thomas S. Thomson, O. C. Erichsrud, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick.

This cause came on to be heard at the January Term of this Court, 1902, upon the pleadings and Final Proofs therein, and it was argued by counsel, and thereupon, upon consideration thereof, it is by the Court Ordered, Adjudged and Decreed, that the Complainant's Bill herein be, and the same is hereby dismissed on the merits.

Dated this 1st day of March, 1902.

WM. LOCHREN, Judge.

* * * * * A true record. Attest: Henry D. Lang, Clerk.

335 Circuit Court of the United States, for the District of Minnesota, Third Division.

The United States of America, Complainant,
vs.
Chicago, Milwaukee & St. Paul Railway Company, The Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick, Defendants.

Now comes the United States of America, complainant in the above entitled action, by Milton D. Purdy, U. S. District Attorney for Minnesota, and J. M. Gilman, Assistant Attorney in said action for plaintiff, and conceiving itself aggrieved by the decree entered in the above entitled cause on the 10th day of March, 1902, dismissing complainant's bill, doth hereby appeal, from said order to the United States Circuit Court of Appeals for the Eighth Circuit, and said complainant prays that its said appeal may be allowed and that a transcript of

the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

MILTON D. PURDY,
U. S. District Attorney for Minnesota.

J. M. GILMAN,
Assistant Attorney for Plaintiff in Said Action.

Filed March 15th, 1902. Henry D. Lang, Clerk.

336 And now, to wit: on March 15th, 1902, it is ordered that the appeal in the foregoing entitled cause be allowed as prayed for.

WM. LOCHREN, Judge.

Filed March 15th, 1902. Henry D. Lang, Clerk.

Assignment of Errors of appellant on appeal of the foregoing entitled action, to the U. S. Circuit Court of Appeals, Eighth Circuit.

And now in the foregoing entitled cause, and at the time of the filing therein of the foregoing and attached petition for appeal, comes the said appellant, the United States of America, and says that in the records and proceedings in the above entitled cause there is manifest error, in this, towit: That the court erred as follows:

First: The court erred in holding that lands in the indemnity limits of a railroad grant sustained a like relation to the grant as lands in the place or granted limits, and in such ruling involved the following errors:

(a) That lands could be withdrawn from market before the location of the road, notwithstanding the provision in Section 5 of said granting act; "that as soon as the Governor of said State shall file or cause to be filed with the Secretary of the Interior, maps designating the route of said road, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act."

(b) That the Secretary could withdraw land from market which was subject to a homestead entry claim at the date of the passage of the act, and that such homestead entry did not except the land from a general withdrawal.

(c) That the withdrawal of lands in the indemnity limits from market by the Secretary of the Interior December
337 10th, 1866, or at any other time operated upon the tract of land in question, as the homestead entry of Barkley did not except it from the operation of the withdrawal.

(d) That a homestead or pre-emption entry in force at the time of the passage of a granting act, upon place or granted lands, does not except the land from the grant for all future time.

(e) That lands within the indemnity limits of a grant if subject to a homestead or pre-emption entry prior to the selection of the land by the company, or prior to its withdrawal from market, if afterwards cancelled, the land then becomes subject to selection by the company, but not to a homestead or pre-emption claim by the first legal applicant therefor.

(f) In not noticing the first, second, sixth, ninth, tenth, eleventh, twelfth and fourteenth stipulations of fact agreed to by counsel.

Second. The court erred in not finding as a fact from the evidence that the application of Donovan to enter the land in question secured to him the same right as though the application had been allowed, which fact is well established by many decisions of the highest court.

Third. The court erred in not finding as a fact from the evidence that Donovan complied with the law so as to entitle him to a certificate and patent for the land in question, and thereby acquired a vested interest in the land which could not be taken from him by any act of Congress without his consent.

Fourth. The court erred in holding that the defendant Woodwick became a bona fide purchaser of the land in question under the act of March 3rd, 1887 and cut out Donovan of his acquired vested right.

Fifth. The court erred in not holding that the certification of the land to the State was absolutely void and conferred no title to the State or to its grantees.

338 Sixth. The court erred in not holding under the decision in the case of Van Wyck against Knevals, 106 U. S. 360, that an action can be maintained by the United States to remove a cloud from the title to land so as to enable the Government to convey a good title to the party entitled thereto.

Seventh. The court erred in holding that the action and judgment in the suit between Donovan and Thomson can be used to prejudice Donovan's title or to uphold the title of Woodwick to the land in question.

Eighth. The court erred in not finding and holding that the defendant Donovan had a clear right to a good title to the

land, which could and should be conveyed to him by the United States.

Ninth. The court erred in ordering complainant's bill to be dismissed. Wherefore the complainant prays that the said decree may be in all things reversed; and that complainant may have a decree for the relief prayed in its amended bill of complaint.

MILTON D. PURDY,
U. S. District Attorney for Minnesota.

J. M. GILMAN,
Assistant Attorney in Said Action.

Indorsed: Petition for and Order Allowing Appeal. Assignment of Errors and Prayer for Reversal. Filed March 15th, 1902. Henry D. Lang, Clerk.

339 Circuit Court of the United States, for the District of Minnesota, Third Division.

The United States of America, Complainant,
vs.
Chicago, Milwaukee & St. Paul Railway Company, The Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick, Defendants.

Citation.

The United States of America—ss.

To the following defendants in the above entitled action: Chicago, Milwaukee & St. Paul Railway Company, The Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick,

You and each of you are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Eight Circuit, to be holden at the City of St. Louis, Mo., sixty days from and after the date hereof, pursuant to an appeal taken out of and allowed by the Circuit Court of the United States of the District of Minnesota, Third Division, wherein the United States of America is appellant and the defendants Chicago, Milwaukee & St. Paul Railway Company, the Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick, are respondents, to show cause, if any there be, why the decree in the said appeal mentioned should not be set aside and cor-

rected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Lochren, acting Circuit Judge of the United States Circuit Court of the District of Minnesota, this 15th day of March, A. D. 1902.

WM. LOCHREN,
Acting Circuit Judge.

340 United States Circuit Court, District of Minnesota, 3d Division. United States of America vs. Chicago, Milwaukee & St. Paul Railway Company, & Michael Donovan et al., Defendants. Citation. Due service of the within citation is hereby admitted this 19 day of March, A. D. 1902, at Minneapolis, Minnesota. Andrew C. Dunn, Attorney for Defts. Anna Erichsrud, Addie J. Erichsrud, Mabel H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, & Louis K. Woodwick. Due service of within Citation this 17th day of March, 1902, is hereby admitted. Burton Hanson & W. H. Norris, Solicitors for Deft. Ry. Cos.

341 United States of America.

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, Clerk of said Circuit Court, do hereby certify and return to the Honorable, the United States Circuit of Appeals for the Eighth Circuit, that the foregoing, consisting of 340 pages, numbered consecutively from 1 to 340 inclusive, is a true and complete transcript of the Record for Hearing in Equity, proceedings upon the hearing of said cause, Opinion, Final Decree, and the records and proceedings upon the appeal in said cause and of the whole thereof, as appears from the original records and files of said Court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

Seal
U. S. Circuit Court,
Dist of Minnesota,
Third Division.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of said Court, at Saint Paul in the District of Minnesota, this 21st day of March, A. D. 1902.

HENRY D. LANG, Clerk.

Filed Mar. 24, 1902. John D. Jordan, Clerk.

211 *Appearance of Mr. Milton D. Purdy for appellant.*

And on the twenty-eighth day of March, A. D. 1902, the appearance of Mr. Milton D. Purdy as counsel for appellant was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

United States circuit court of appeals, eighth circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* THE CHICAGO, MILWAUKEE AND ST. PAUL Railway Company et al.	No. 1740.

The clerk will enter my appearance as counsel for the appellant.

MILTON D. PURDY,
United States Attorney.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1740. United States of America, appellant, vs. Chicago, Milwaukee and St. Paul Railway Co. et al. Appearance. Filed Mar. 28, 1902. John D. Jordan, clerk. Milton D. Purdy, counsel for appellant.

Appearance of Mr. John M. Gilman for appellant.

And on the twenty-eighth day of March, A. D. 1902, the appearance of Mr. John M. Gilman as counsel for appellant was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* THE CHICAGO, MILWAUKEE AND ST. PAUL Railway Company et al.	No. 1740.

The clerk will enter my appearance as counsel for the appellant.

JOHN M. GILMAN.

212 (Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1740. United States of America, appellant, vs. The Chicago, Milwaukee and St. Paul Railway Co. et al. Appearance. Filed Mar. 28, 1902. John D. Jordan, clerk. John M. Gilman, counsel for appellant.

Appearance of Mr. Burton Hanson for appellee railway company.

And on the first day of April, A. D. 1902, the appearance of Mr. Burton Hanson as counsel for appellee railway company, was filed in the

clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE CHICAGO, MILWAUKEE AND ST. PAUL RAILway Company et al. } No. 1740.

The clerk will enter my appearance as counsel for the appellee Ry. Co.

BURTON HANSON.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1740. The United States of America, appellant, vs. The Chicago, Milwaukee and St. Paul Railway Co. et al. Appearance. Filed Apr. 1, 1902. John D. Jordan, clerk. Burton Hanson, counsel for appellees.

Appearance of Mr. Andrew C. Dunn for appellees.

And on the fourth day of April, A. D. 1902, the appearance of Mr. Andrew C. Dunn as counsel for the appellees was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

213 THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE CHICAGO, MILWAUKEE AND ST. PAUL RAILway Company et al. } No. 1740.

The clerk will enter my appearance as counsel for the appellees, Anna Erichsrud, Addie J. Erichsrud, Mabel H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick.

ANDREW C. DUNN,
Residing at Winnebago City, Minnesota.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1740. The United States of America, appellant, vs. The Chicago, Milwaukee and St. Paul Railway Co. et al. Appearance. Filed Apr. 4, 1902. John D. Jordan, clerk. Andrew C. Dunn, counsel for appellees.

Appearance of Mr. W. H. Norris for appellees, railway companies.

And on the twelfth day of April, A. D. 1902, the appearance of Mr. W. H. Norris as counsel for the appellees, railway companies, was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

United States circuit court of appeals, eighth circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY Company et al. } No. 1740.

The clerk will enter my appearance as counsel for the appellees, railway companies.

W. H. NORRIS,
Minneapolis, Minn.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1740. The United States of America, appellant, vs. The Chicago, Milwaukee and St. Paul Railway Co. et al. Appearance. Filed Apr. 12,
214 1902, John D. Jordan, clerk. W. H. Norris, Minneapolis, Minn., counsel for appellees.

Argument commenced.

And on the fourteenth day of May, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an entry in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. May term, 1902.

WEDNESDAY, *May 14, 1902.*

THE UNITED STATES OF AMERICA, appellant,
vs.
THE CHICAGO, MILWAUKEE AND ST. Paul Railway Company et al. } No. 1740. Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been called for hearing in its regular order, argument was commenced by Mr. John M. Gilman for appellant, and continued by Mr. Andrew C. Dunn, on behalf of the appellees, Erichsrud et al., and the hour of adjournment having arrived, further argument is postponed until to-morrow.

Order of submission.

And on the fifteenth day of May, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. May term, 1902.

THURSDAY, *May 15, 1902.*

THE UNITED STATES OF AMERICA, appellant,
vs.
CHICAGO, MILWAUKEE AND ST. PAUL Railway Company et al. } No. 1740. Appeal from the circuit court of the United States for the district of Minnesota.

215 This cause having been called for further hearing, argument was continued by Mr. Andrew C. Dunn for the appellees, Erichsrud et al., and concluded by Mr. John M. Gilman for appellant. Mr.

W. H. Norris submits a brief in behalf of the railway companies, appellees.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

Opinion.

And on the sixteenth day of June, A. D. 1902, an opinion of said circuit court of appeals was filed in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. May term, A. D. 1902.

216 THE UNITED STATES OF AMERICA, appellant, *vs.* CHICAGO, MILWAUKEE & SAINT PAUL Railway Company et al., appellees. } No. 1740. Appeal from the circuit court of the United States for the district of Minnesota.

Mr. John M. Gilman (Mr. Milton D. Purdy was with him on the brief) for appellant.

Mr. Burton Hanson and Mr. W. H. Norris filed brief for railway companies.

Mr. Andrew C. Dunn for appellees Erichsrud, Anderson, Remington, and Woodwick.

Before Sanborn and Thayer, circuit judges, and Carland, district judge.

On March 6, 1893, the United States filed their bill of complaint in the above action against the Chicago, Milwaukee & St. Paul Railway Company, the Southern Minnesota Railway Co., Michael Donovan, Thomas S. Thompson, and O. C. Erichsrud. Service of subpœna was made upon the railway companies and Donovan, and on August 11, 1894, said companies answered the bill. Donovan did not answer the bill till March 6, 1901, and then by his answer confessed the same and prayed that the relief asked for might be granted. On March 4, 1901, a supplemental bill was filed by the United States in said action wherein it was stated that no service had ever been made upon Thompson or Erichsrud, and that no testimony had ever been taken in the cause; that O. C. Erichsrud had departed this life since the commencement of the action, leaving surviving him, Anna Erichsrud, his widow, Addie J. Erichsrud, Mabelle Erichsrud, and Julia P. Erichsrud, his children and only heirs at law, and that on June 24, 1899, said heirs had joined in a deed of the land in question to Louis K. Woodwick. Process was prayed against these last-named defendants, and on May 2, 1901, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson (formerly Erichsrud), Julia P. Remington (formerly Erichsrud), and Louis K. Woodwick answered the bill and supplemental bill.

This action was commenced by the United States for the purpose of having the east half of the northwest quarter of section thirty-five, township one hundred and one, range twenty-eight, 5th P. M., Min-

nesota, restored to the United States upon the ground that the land
217 had been improperly certified to the State of Minnesota as a part of the indemnity lands of the land grant of July 4, 1866, made in aid of the Southern Minnesota Railroad Company for the reason that prior to the passage of the land-grant act of July 6, 1866, an homestead claim had been filed upon said land by one Luman Barkley. The material facts, as shown by the pleadings and proofs, are as follows:

The land is within the indemnity limits of the act of July 4, 1866 (14 Stat., 87). The withdrawal of lands along that portion of the Southern Minnesota Railroad extension opposite said land was ordered August 23, 1866, and the order received by the district land office September 10th following. November 29, 1870, the Southern Minnesota Railroad Company selected the tract of land in controversy in lieu of land lost in the granted limits of the act of July 4, 1866, and the Land Department certified said land to the State of Minnesota for the benefit of said railroad company March 25, 1871. The State of Minnesota conveyed said land to said railroad company August 8, 1871. The land was sold under a mortgage foreclosure to A. P. Mann and H. H. Camman in February, 1877. It was conveyed by Mann and Camman to the Southern Minnesota Railway Company March 3, 1877. It was conveyed by said railroad company to O. C. Erichsrud March 20, 1888. November 6, 1898, it was decreed by the probate court of Faribault County, Minnesota, to Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson, and Julia P. Remington, as heirs at law of O. C. Erichsrud, deceased. May 24, 1899, these heirs at law conveyed the same to the defendant, Louis K. Woodwick, for the sum of two thousand dollars, cash. On June 21, 1866, Luman Barkley, a person duly qualified to acquire lands under the homestead law of the United States, duly made entry as an homestead of the land in controversy, together with an adjoining tract of eighty acres in section 26. January 14, 1868, the entry of Barkley was cancelled on account of the abandonment of the land by Barkley. June 6, 1868, Michael Donovan entered as an homestead the eighty acre tract in section 26, and subsequently received patent for the same. It was in pursuance of a contest initiated by Michael Donovan in 1867 that Barkley's entry was cancelled. When Michael Donovan was notified by the local land office that Barkley's entry was cancelled, he, about June 6, 1868, applied to enter the tracts of land of eighty acres each in sections 35 and 26, respectively. Donovan was allowed to enter the tract in 26, but was informed by the local office that the tract in section 35, the land in controversy, had been withdrawn from sale for the reason that it was within the indemnity limit of the land grant contained in the act of July 4, 1866. Donovan made no written application in June, 1868, to enter the tract in section 35. When Donovan initiated the contest against Barkley in 1867, he signed a paper which was called an application to enter the land in controversy. This paper was in blank as to date and it was undoubtedly to be properly filled out when Barkley's entry should be cancelled, but when the entry was cancelled this paper was destroyed, as it was claimed the land was not subject to entry for the reasons herein stated.

Donovan used the land in controversy in connection with his homestead in section 26 till 1885, when one Thompson went into possession

of the same as assignee of a contract made by the Southern Minnesota Railway Co., and under and in pursuance of which title to the land was finally conveyed to Erichsrud. Donovan has not been in possession of the land since 1885.

218 Carland, district judge, after stating the foregoing facts, delivered the opinion of the court.

The claim of the United States is this: At the time of the withdrawal of indemnity lands along the line of the Southern Minnesota Railway Company opposite the land in question, to wit, on September 10, 1866, there was a valid homestead filing on the land in question made by Luman Barkley on June 21, 1866. That the cancellation of Barkley's entry on January 14, 1868, left the land in controversy open to selection by any legal applicant. Ryan v. Railroad Co., 99 U. S., 382; Wisconsin Central R. R. Co. v. Price County, 133 U. S., 496.

That as Michael Donovan applied to enter the land in June, 1868, and was wrongfully refused so to do by the local land office, that Donovan still is entitled to enter the land for the reason that the Southern Minnesota Railroad Company did not select the same as indemnity land until November 29, 1870.

There is no question but that the United States can commence and maintain this action so far as its right to do so is concerned. Van Wyck v. Knevals, 106 U. S., 360; United States v. San Jacinto Tin Co., 125 U. S., 273; United States v. Ry. Co., 141 U. S., 358; United States v. Oregon & C. R. Co., 101 Fed. Rep., 316; United States v. Winona & St. Peter R. R. Co., 67 Fed., 969; chap. 376, sec. 2, 24 Stat., 556.

But as it conclusively appears by the record in this case that the United States has no interest in the land itself and that the whole object of the action is to restore the land to the United States in order that they may convey it to Donovan, the case falls within the rule announced in U. S. v. Beebe, 127 U. S., 338, wherein Justice Lamar uses the following language:

"We are of the opinion that when the Government is a mere formal complainant in a suit, not for the purpose of asserting any public right, or protecting any public interest, title, or property, but merely to form a conduit through which one private person can conduct litigation against another private person, a court of equity will not be restrained from administering the equities existing between the real parties by any exemption of the Government designed for the protection of the United States alone."

The fact that this action is claimed to have been brought under the act of March 3, 1887, 24 Stat., 556, can not affect this rule. The act referred to simply confers the right to bring this action after demand and refusal to convey. It does not say that the Government shall recover in any event. If this had been the object of Congress it would have been easier to have divested the title by the act itself, without going into court, which of course could not have been done. Conceding, but not deciding, that the facts show that Donovan obtained a right to the land in controversy superior to the Southern Minnesota Railroad Company, still we are of the opinion that these same facts disclose a case where the doctrine

of laches should be applied. This land was certified to the State of Minnesota March 25, 1871—twenty-two years, lacking a few days, prior to the commencement of this action against the railway companies. The Erichsrud heirs and Woodwick were not brought into the suit by supplemental bill till March 4, 1901, thirty years after said certification.

This action could have been commenced by the United States at
219 any time after the date of certification, and Donovan's knowledge of his claim to this land must be held in this action to be the knowledge of the United States. Donovan was out of possession of the land sixteen years prior to the commencement of this suit against the Erichsrud heirs and Woodwick. By sec. 5134, Gen. Stat. Minn., 1894, actions for the recovery of real estate are limited to a period of fifteen years from the last possession of the plaintiff or his ancestor or grantor. This court in the case of Kelley v. Boettcher, 85 Fed. Rep., 62, exhaustively discussed the rules which govern the application of the doctrine of laches.

Without repeating what is there said, we may state on the authority of the case referred to and the authorities therein cited that the settled rule is that courts of equity are not bound by, but that they usually act or refuse to act in analogy to the statute of limitations relating to actions at law of like character, and that when a suit is brought after the statutory time has elapsed the burden is on complainant to show by proper averment and proof that it would be inequitable to apply the doctrine of laches to his case. We think that the evidence in this case not only does not show that it would be inequitable to apply the doctrine of laches, but on the contrary the evidence shows that in equity and good conscience it ought to be applied. O. C. Erichsrud, as assignee of the contract held by Thompson, paid the balance due on the contract to the Southern Minnesota Railway Company and received a deed for the land in controversy March 20, 1888. At this time Erichsrud seems to have had no notice of the claim of Donovan. Donovan was out of possession and there was no claim of record. On May 24, 1899, when Woodwick purchased the land from the Erichsrud heirs, paying two thousand dollars therefor, O. C. Erichsrud had not been served with subpœna and the heirs were not parties to this action. If Erichsrud was an innocent purchaser, then Woodwick obtained whatever title Erichsrud could convey. This suit, at the time Woodwick purchased, was not lis pendens, as Erichsrud had not been served with subpœna. Murray v. Ballou, 1 Johns. Chancery, 566; Union Trust Co. v. Southern Nav. Co., 130 U. S., 570.

It is claimed that Woodwick cannot be an innocent purchaser, for the reason that he or his grantors never had the legal title. Whether the certification of the land in question under the facts as they appear in this case carried the legal title or whether Woodwick can be said to be in a technical sense an innocent purchaser, we do not care to determine. He certainly occupies a position which appeals to a court of equity to such an extent as to justify this court in refusing relief after the statute of limitations at law has run. The decree below was for the right party and is affirmed.

Filed June 16, 1902.

220 *Decree.*

And on the sixteenth day of June, A. D. 1902, in the record of the proceedings of said circuit court of appeals is a decree in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. May term, 1902.

MONDAY, *June 16, 1902.*

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, The Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabelle H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick.

No. 1740. Appeal from the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed without costs to either party in this court.

June 16, 1902.

Petition for appeal.

And on the twenty-third day of May, A. D. 1903, a petition for appeal was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

221 THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY Company, the Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabel H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick, defendants.

Now comes the United States of America, complainant and appellant in the above-entitled action, by Charles C. Houpt, the United States district attorney for Minnesota, and shows to the court that the matter in controversy herein exceeds in value one thousand dollars besides costs.

And conceiving itself aggrieved by the decree affirming the decree of the circuit court, made and entered in the above-entitled cause on the 16th

day of June, 1902, by the United States circuit court of appeals for the eighth circuit, doth appeal from the decree of said United States circuit court of appeals to the Supreme Court of the United States.

And this appellant prays that said appeal may be allowed and a transcript of the record and proceedings herein, upon which said decree was made, duly authenticated, may be transmitted to the United States Supreme Court.

CHAS. C. HOUPT,
United States Attorney and Attorney for Complainant.

(Endorsed:) No. 1740. United States of America, district of Minnesota. United States circuit court of appeals. The United States of America vs. Chicago, Milwaukee & St. Paul Ry. Co. et al. Petition for appeal. Filed May 23, 1903. John D. Jordan, clerk.

222 *Assignment of errors.*

And on the twenty-third day of May, 1903, an assignment of errors was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY Company, the Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabel H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick, defendants.
Assignment of errors.

Comes now the above-named complainant and appellant, the United States of America, and makes and files the following assignments of error, upon which it will rely in its appeal from the decree of the court above named, made and entered herein on the 16th day of June, 1902, as follows, to wit:

I. That the court erred in holding and deciding that the United States has no interest in the land involved in this controversy, and that the whole object of the action is to restore the land to the United States, so that it may be conveyed to Michael Donovan.

II. That the court erred in holding and deciding that the act of March 3, 1887 (24th Statutes, page 556), does not affect the rule as announced in the first assignment of error herein.

III. That the court erred in holding and deciding that this action could have been commenced by the United States at any time after the date of the certification of the land to the State of Minnesota on March 25, 1871, and that the knowledge of the claimant of said land,
223 Michael Donovan, must be held in this action to be the knowledge of the United States.

IV. The court erred in holding and deciding that the statute of limitations, as expressed in section 5134, General Statutes of Minnesota, 1894, is applicable to the facts of this case.

V. The court erred in finding and deciding that the doctrine of laches is applicable to the facts in this case, and in holding that in equity and in good conscience, such doctrine should be applied.

VI. The court erred in not finding and deciding that the facts show that the claimant, Michael Donovan, obtained a right to the land in controversy, superior to the Southern Minnesota Railway Company, and in holding and deciding that the facts disclose a case where the doctrine of laches should be applied.

VII. The court erred in finding and deciding that the decree in the court below was for the right party, and in affirming the same.

VIII. The appellant further adopts as assignments of error herein, each and all of the assignments made and filed in its appeal from the decree of the court below to this court as fully and to the same extent as if such assignments were repeated and restated, and the same are hereby referred to and made a part of the assignments of error herein.

Wherefore, the appellant prays that the said decree of the circuit court of appeals of the United States for the eighth circuit be reversed, with directions to render and enter a decree in favor of complainant and appellant as against defendants and appellees, in accordance with the prayer for this appeal and the prayer of the amended bill of complaint in this cause.

CHAS. C. HOUPT,
United States District Attorney for Minnesota.

(Endorsed:) No. 1740. United States of America, district of Minnesota. United States circuit court of appeals. The United States of America vs. Chicago, Milwaukee & St. Paul Ry. Co. et al. Assignments of error. Filed May 23, 1903. John D. Jordan, clerk.

224 *Order allowing appeal.*

And on the twenty-third day of May, A. D. 1903, an order allowing an appeal was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

THE UNITED STATES OF AMERICA, APPELLANT, *vs.* CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY Company, the Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabel H. Anderson, née Erichsrud; Julia P. Remington, née Erichsrud, and Louis K. Woodwick, appellees.	No. 1740. Appeal from the circuit court of the United States for the district of Minnesota.

This date came the United States of America, by Charles C. Houpt, the United States district attorney for Minnesota, and presented his petition for an appeal from the decree of this court to the Supreme Court of the United States, on consideration whereof this court finds that the matter in controversy exceeds in value one thousand dollars besides

costs, and that the United States is entitled to an appeal to the Supreme Court of the United States, and the same is hereby allowed.

WALTER H. SANBORN,
Circuit Judge.

Dated this 23 day of May, A. D. 1903.

(Endorsed:) No. 1740. United States of America, district of Minnesota. United States circuit court of appeals. The United States of America vs. Chicago, Milwaukee & St. Paul Ry. Co. et al. Order allowing appeal. Filed May 23, 1903. John D. Jordan, clerk.

225 *Citation.*

And on the first day of June, A. D. 1903, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which, with the admission of service endorsed thereon, is in the words and figures following, to wit:

226 United States circuit court of appeals, eighth circuit.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, the Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabel H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick, defendants.

THE UNITED STATES OF AMERICA, *ss:*

To the following-named defendants: Chicago, Milwaukee and St. Paul Railway Company, Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabel H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick:

You are hereby cited and admonished to appear at the Supreme Court of the United States, at the city of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to an appeal duly taken and allowed from that certain decree of the United States circuit court of appeals for the eighth circuit, in that certain cause wherein the United States of America is complainant and appellant, and you, the said Chicago, Milwaukee and St. Paul Railway Company, Southern Minnesota Railway Company, Anna Erichsrud, Addie J. Erichsrud, Mabel H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick are defendants and appellees, to show cause, if any there be, why the order and decree of affirmance of said circuit court of appeals entered therein on the 16th day of June, 1902, and in said appeal mentioned, and for which said appeal is taken, should not be set aside and corrected, and why speedy justice should not be done in the premises.

Witness the honorable Walter H. Sanborn, judge of the circuit court of the United States, this 23 day of May, in the year of our Lord one thousand nine hundred and three.

WALTER H. SANBORN,
Circuit Judge.

227 Due and personal service of the foregoing citation, by receipt of a true copy thereof, is hereby admitted this 26th day of May, 1903.

BURTON HANSON,
W. H. NORRIS,
Solicitors for the Chicago, Milwaukee and St. Paul and the Southern Minnesota Railway Companies.

Personal service of the foregoing citation, by receipt of a true copy thereof, is hereby admitted this 28 day of May *May*, 1903.

ANDREW C. DUNN,
Solicitors for Defendants Anna Erichsrud, Addie J. Erichsrud, Mabel H. Anderson, nee Erichsrud, Julia P. Remington, nee Erichsrud, and Louis K. Woodwick.

228 (Indorsed:) Original. United States of America, district of Minnesota, United States circuit court of appeals. The United States of America vs. Chicago, Milwaukee and St. Paul Ry. Co. et al. Citation. I hereby admit service of a copy of within citation this 28th day of May, 1903. Andrew C. Dunn. Filed Jun' 1, 1903. John D. Jordan, clerk.

229 *Clerk's certificate.*

United States circuit court of appeals, eighth circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing two hundred twenty-nine pages contain full, true, and complete copies of all the pleadings, proceedings and record entries, including the opinion of said circuit court of appeals, in a certain cause wherein The United States of America was appellant, and the Chicago, Milwaukee and St. Paul Railway Company et al. were appellees, No. 1740, May term, 1902, as full, true, and complete as the same remain on file and of record in my office.

I do further certify that the mandate in said cause was issued to the circuit court of the United States for the district of Minnesota on the twenty-seventh day of August, A. D. 1902.

I do further certify that the original citation, with the admission of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said circuit court of appeals at office in the city of St. Louis, Missouri, in the eighth circuit, this fourth day of June, A. D. 1903.

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

230 (Indorsement on cover:) File No. 18968. U. S. C. C. of appeals, 8th circuit. Term No. 317. The United States, appellant, vs. Chicago, Milwaukee & St. Paul Railway Company et al. Filed June 9", 1903. Office of the clerk Supreme Court U. S. Received Jun'. 9,1903.